

# **EXHIBIT A**

**IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA  
CIVIL DIVISION**

**COVER SHEET**

Plaintiff(s)  <div style="font-size: 1.2em; font-family: cursive;">Bowser Automotive, Inc.</div>	<div style="border: 1px solid black; padding: 2px; margin-bottom: 5px;">           Case Number :  <div style="display: flex; justify-content: space-around; align-items: center;"> <div style="border: 1px solid black; padding: 2px 10px;">GD</div> <div style="border: 1px solid black; padding: 2px 10px;">- 20 -</div> <div style="border: 1px solid black; padding: 2px 10px;">5272</div> </div> </div> <div style="border: 1px solid black; padding: 2px; margin-bottom: 5px;">           Type of pleading :  <div style="font-size: 1.1em; font-family: cursive;">Civil Action - Complaint Seeking Declaratory Relief</div> </div> <div style="border: 1px solid black; padding: 2px; margin-bottom: 5px;">           Code and Classification : _____         </div> <div style="border: 1px solid black; padding: 2px; margin-bottom: 5px;">           Filed on behalf of  <div style="font-size: 1.2em; font-family: cursive;">Bowser Automotive, Inc.</div> </div> <div style="border: 1px solid black; padding: 2px; margin-bottom: 5px;">           (Name of the filing party)         </div> <div style="border: 1px solid black; padding: 2px; margin-bottom: 5px;"> <div style="display: flex; justify-content: space-between;"> <input checked="" type="checkbox"/> Counsel of Record           <input type="checkbox"/> Individual, If Pro Se         </div> </div> <div style="border: 1px solid black; padding: 2px; margin-bottom: 5px;">           Name, Address and Telephone Number :  <div style="font-size: 1.1em; font-family: cursive;">             John Goodrich              JACK Goodrich &amp; Associates, P.C.              429 Fourth Ave., Ste. 900              Pittsburgh, PA 15219 412-264-4603           </div> </div> <div style="border: 1px solid black; padding: 2px; margin-bottom: 5px;">           Attorney's State ID : <div style="font-size: 1.1em; font-family: cursive;">49648</div> </div> <div style="border: 1px solid black; padding: 2px;">           Attorney's Firm ID: <div style="font-size: 0.8em;">T102122 28 April 2020 14:20:10 GD-20-005272</div> </div>
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Defendant(s)  
  

Chubb Group of Insurance  
 Companies &  
 Federal Insurance Company

Vs

DEPT OF COURT RECORDS  
 CIVIL/FAMILY DIVISION  
 ALLEGHENY COUNTY PA

2020 APR 28 PM 1:19

**FILED**

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

BOWSER AUTOMOTIVE, INC.	:	
1001 Clairton Boulevard	:	
Pleasant Hills, PA 15236	:	
	:	
vs.	:	
	:	No.
CHUBB GROUP OF INSURANCE	:	
COMPANIES	:	
600 Independence Parkway	:	
PO Box 4700	:	
Chesapeake, VA 23327-4700	:	
	:	
and	:	
	:	
FEDERAL INSURANCE	:	
COMPANY	:	
Capital Center	:	
215 North Illinois, Suite 1100	:	
Indianapolis, IN 46204-1927	:	

**CIVIL ACTION – COMPLAINT SEEKING  
DECLARATORY RELIEF**

**Parties**

1. Plaintiff, Bowser Automotive, Inc, (hereinafter “Bowser”) is a corporation organized and existing under the State of Delaware, with its principal place of business located at 1001 Clairton Boulevard, Pleasant Hills, Allegheny County, Pennsylvania 15236; as such, Plaintiff is a citizen of the Commonwealth of Pennsylvania and the County of Allegheny.

2. Plaintiff owns and operates Bowser Automotive, a group of new and used car dealerships and repair centers.

3. Defendant, Chubb Group of Insurance Companies (hereinafter “Chubb”) is property and casualty insurance company with a principal place of business at 600 Independence

Parkway, PO Box 4700, Chesapeake, VA 23327-4700, and, being duly authorized, regularly and routinely conducts business in the Commonwealth of Pennsylvania.

4. Defendant, Chubb owns and operates various subsidiary insurance companies including Federal Insurance Company (hereinafter “Federal”) which has a primary business address of Capital Center 215 North Illinois, Suite 1100, Indianapolis, IN 46204-1927, and, being duly authorized, regularly and routinely conducts business in the Commonwealth of Pennsylvania.

5. The present action seeks declaratory relief as to a Chubb/Federal Insurance policy, described in detail below, with respect solely to Pennsylvania state law for losses, damages, and expenses related to the COVID-19 pandemic.

6. Defendants, Chubb and Federal, regularly and routinely conduct business in Allegheny County, Pennsylvania.

#### **Insurance Coverage**

7. At all times material hereto, there existed, in full force and effect, a Custmarq Classic Insurance Program Policy (No. 3605-30-31 LIO) (“Chubb Policy”) issued by Defendants Chubb and Federal, to Plaintiff, Bowser, providing, *inter alia*, property, business, personal property, business income, extra expense, continuation, civil authority and additional coverages applicable to the losses, damages, and expenses claimed in this action. A true and correct copy of the Chubb Policy is attached hereto and marked as Exhibit “A”.

8. The Chubb Policy was in effect and provided coverage for the period November 1, 2019 to November 1, 2020.

9. The Chubb Policy is an “All Risks” policy which provides coverage for losses, damages, and expenses to the insured premises unless specifically excluded.

10. The Chubb Policy does not exclude the losses, damages, and expenses caused by the COVID-19 Pandemic.

11. The Chubb Policy provides coverage for the losses, damages, and expenses incurred Plaintiff, Bowser, as a result of the COVID-19 pandemic and the actions of the government in response thereto.

12. This case involves purely an issue of Pennsylvania state law.

13. Plaintiff Bowser's claims arise out of a Pandemic.

### **Coronavirus Pandemic**

14. The Center for Disease Control and the World Health Organization has for years warned of the possibility of an airborne virus which could cause a worldwide pandemic.

15. Coronavirus COVID-19 is a highly contagious airborne virus which has rapidly spread and continues to spread across the United States.

16. COVID-19 has been declared a pandemic by the World Health Organization.

17. The COVID-19 virus remains stable and transmittable in aerosols and various surfaces for prolonged periods of time, up to two to three days on some surfaces.

18. The COVID-19 virus is a public health crisis that has profoundly affected all aspects of society, including the ability of the public to congregate and gather.

19. The COVID-19 pandemic has been exacerbated by the fact that the virus infects and stays on the surfaces of objects and materials for prolonged periods.

20. The Center for Disease Control has issued guidance that gatherings of more than ten (10) people should not occur; such gatherings increase the danger of contracting the COVID-19 virus.

21. On March 6, 2020, Governor Tom Wolf issued a Proclamation of Disaster Emergency as a result of the COVID-19 virus.

22. On March 19, 2020, Governor Tom Wolf issued an Order requiring all non-life sustaining businesses in the Commonwealth to cease operation and to close all physical locations.

22. On March 23, 2020, Governor Tom Wolf issued a Stay at Home Order for citizens of various counties including Allegheny County.

23. On March 23, 2020 the Pennsylvania Department of Health issued a similar Order noting that the “operation of non-life sustaining businesses present the opportunity for unnecessary gatherings, personal contact and interaction that will increase the risk of transmission and the risk of community spread of COVID-19.”

24. On April 1, 2020, Governor Tom Wolf extended the March 23, 2020 Stay at Home Order to the entire Commonwealth of Pennsylvania.

25. The COVID-19 virus, as evidenced by these Orders, causes damage to property, particularly in places of business, such as that of Plaintiff, Bowser, and other similarly situated persons and organizations, where the operation of the business requires inter-action, gatherings and contact in areas where there exists a heightened risk of contamination by the COVID-19 virus.

#### **Impact of COVID-19 Pandemic**

26. As a result of the impact of the COVID-19 pandemic and the referenced Orders of the Governor, Plaintiff, Bowser, has sustained partial loss of use of the premises, was forced to totally close new and used car sales, has seen a dramatic decrease in its parts, service, and body shop business, and has been forced to furlough employees, thereby incurring losses, damages, and expenses.

27. As a result of the impact of the COVID-19 pandemic and the referenced Orders of the Governor, many similarly situated businesses have been ordered to close, thereby incurring losses, damages, and expenses similar to Plaintiff.

28. The business of Plaintiff, Bowser, like many businesses, operates in “closed environment” where many persons, including employees and customers, cycle in and out thereby creating a risk of contamination to the insured premises.

29. As a result of the COVID-19 pandemic, the business of Plaintiff, Bowser, like other similarly situated businesses, is susceptible to person to person, person to property, and property to person transmittal and contamination.

30. The COVID-19 pandemic has directly and adversely affected the business operations of Plaintiff, Bowser, by causing damage and the risk of further harm to the property and its occupants.

31. Plaintiff, Bowser, has suffered Business Income, Civil Authority and other related losses, damages, and expenses which are covered by policies of insurance issued by the Defendants Chubb and Federal.

#### **Claim for Recovery**

32. Plaintiff, Bowser, has made claim upon Defendants, Chubb and Federal, for recovery of losses, damages, and expenses caused by the COVID-19 pandemic and the referenced Orders.

33. Plaintiff, Bowser, is entitled to a declaration that it is covered under the Chubb Policy for, *inter alia*, business income, extra expense, contamination, civil authority and other coverages under the Chubb Policy.

34. Defendants, Chubb and Federal, have wrongfully denied the claims Plaintiff, Bowser, for recovery of damages caused by the COVID-19 pandemic and referenced Orders.

35. Plaintiff, Bowser, is entitled to a declaration that the policies of insurance issued by Defendants Chubb, and Federal, provide coverage for the losses, damages, and expenses caused by the COVID-19 pandemic and referenced Orders.

36. Plaintiff, Bowser, is entitled to an Order enjoining Defendants, Chubb and Federal, from denying coverage to insureds for business income, extra expense, contamination, civil authority and other coverages for losses, damages, and expenses caused by the COVID-19 pandemic and referenced Orders.

**COUNT I**  
**(Declaratory Relief – Individual Claims)**

37. Plaintiff, Bowser, hereby incorporates by reference the foregoing Paragraphs 1 through 36 of this Complaint as though same were fully set forth herein.

38. Plaintiff, Bowser, is entitled to coverage under the Chubb Policy for the losses, damages, and expenses caused by the COVID-19 pandemic and referenced Orders.

39. Defendants Chubb and Federal, have denied and/or refused to acknowledge coverage for the losses, damages, and expenses of Plaintiff, Bowser, caused by the COVID-19 pandemic and the referenced Orders.

40. Plaintiff, Bowser, is entitled to recover for losses, damages, and expenses covered by the COVID-19 pandemic and the referenced Orders under the Chubb Policy.

41. Defendants, Chubb and Federal, have wrongfully refused to provide coverage to Plaintiff, Bowser, under the Chubb Policy.

42. The denial and refusal to acknowledge coverage to Plaintiff, Bowser, under the Chubb Policy is a material breach of that policy.



43. The denial and refusal to acknowledge coverage to Plaintiff, Bowser, under the Chubb Policy is in direct violation of the specific terms and provisions of the Chubb Policy.

44. Plaintiff, Bowser, is entitled to a declaration that he is entitled to coverage for losses, damages, and expenses caused by the COVID-19 pandemic and the referenced Orders.

45. The controversy poses an issue for judicial determination under the Declaratory Judgment Act.

46. The controversy involves substantial rights of the parties to the action.

47. The controversy poses an issue for judicial determination which is not within the scope of authority of any arbitrator or arbitration panel pursuant to the policy of insurance in question.

48. A judgment of this court in this action will also be useful for the purpose of clarifying and settling the legal relations at issue between the parties.

49. A judgment of this court will determine, terminate and afford relief from the uncertainty and controversy giving rise to this action.

WHEREFORE, Plaintiff, Bowser Automotive, Inc., respectfully requests that the Court enter an Order:

- (a) declaring that Plaintiff, Bowser Automotive, Inc., is entitled to coverage for losses, damages, and expenses caused by the COVID-19 pandemic and the referenced Orders from Defendants, Chubb Group of Insurance Companies and Federal Insurance Company;
- (b) such other relief as the court deems appropriate.

Respectfully Submitted:

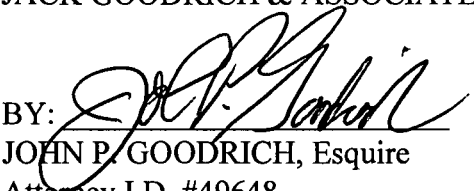
HAGGERTY, GOLDBERG, SCHLEIFER &  
KUPERSMITH, P.C.

BY: \_\_\_\_\_  
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1835 Market Street, Suite 2700  
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(267) 350-6600

SCHMIT KRAMER, P.C.

BY: \_\_\_\_\_  
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JACK GOODRICH & ASSOCIATES

BY:   
JOHN P. GOODRICH, Esquire  
Attorney I.D. #49648  
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Pittsburg, PA 15219  
(412) 261-4663

KOHN SWIFT

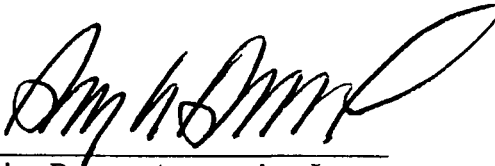
BY: \_\_\_\_\_  
JONATHAN SHUB, Esquire  
PA Attorney I.D. # 53965  
1600 Market Street, Suite 2500  
Philadelphia, PA 19103  
(215) 238-1700

Attorneys for Plaintiffs

VERIFICATION

I, Gary Bowser, as representative of Bowser Automotive, Inc., state that the facts set forth in the Complaint are true and correct to the best of my knowledge, information and belief. I understand that the statements are made subject to the penalties of 18 Pa.C.S.A. §4904 relating to unsworn falsification to authorities.

DATE: 4/27/2020

BY:   
Representing Bowser Automotive, Inc.

# **businessinsurance**

**B Y M O T O R I S T S**

## **RENEWAL**

DIANOIAS EATERY LLC ET AL  
2549 PENN AVE  
PITTSBURGH PA 15222

AGENT COPY  
33.309917-60E

### **THIS RENEWAL INCLUDES THE FOLLOWING CHANGES:**

GENERAL POLICY - PREMISES CHANGE  
WORKERS COMP COVERAGE CHANGE  
COMMERCIAL UMBRELLA COVERAGE CHANGE  
WORKERS COMP COVERAGE DELETED  
AUTO/GARAGE - COVERAGE CHANGE  
UTILITY FILINGS DELETED  
COMMERCIAL PROPERTY COVERAGE CHANGE  
COMMERCIAL GENERAL LIAB COVERAGE CHANGE  
COMMERCIAL GENERAL LIAB I. P. CHANGE  
LIQUOR LIABILITY COVERAGE CHANGE  
POLICY GENERAL INFORMATION

**M** Motorists Mutual  
Insurance Company®  
471 East Broad Street, Columbus, Ohio 43215-3861

HOASTER GEBHARD & CO

719 QUENTIN RD  
LEBANON PA 17042 6924

(717) 274-3360

PRODUCER# 001

**PLAINTIFF'S  
EXHIBIT**

**A**

**Declarations**

POLICY NUMBER 33.309917-60E

EFFECTIVE DATE 06/20/2019



DIANOIAS EATERY LLC ET AL

**Common Policy Declarations - Renewal Certificate****IL 7002 (01-87)**

DIANOIAS EATERY LLC ET AL  
2549 PENN AVE  
PITTSBURGH PA 15222

**POLICY PERIOD**

From 06/20/2019 to 06/20/2020

This policy period begins and ends at 12:01 A.M. Standard  
Time at the address of the Named Insured shown.

ENTITY FORM OF BUSINESS: LIMITED LIABILITY COMPANY

This declarations page voids and supercedes all prior issues and together with the applicable forms listed in the Schedule Of Forms And Endorsements (IL 7004) completes the above numbered policy.

**THIS POLICY CONSISTS OF THE FOLLOWING COVERAGE FORMS**

COMMERCIAL PROPERTY COVERAGE FORM	\$	2,103.00
COMMERCIAL GENERAL LIABILITY COVERAGE FORM		10,757.00
LIQUOR LIABILITY COVERAGE		1,609.00
BUSINESS AUTO COVERAGE FORM		2,829.00
COMMERCIAL UMBRELLA COVERAGE FORM		2,279.00
CYBER LIABILITY		260.00

**ACCOUNTING INFORMATION**

TOTAL PREMIUM	\$	19,837.00
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TOTAL POLICY PREMIUM	\$	19,837.00
Premium adjustments, if any, will be reflected in the next installment. PACKAGE MODIFIER APPLIES		

Includes copyrighted material of Insurance Services Office, Inc., with its permission.

IL 7002 (01-87)

PAGE 01 OF 01

PROCESSED 07/15/2019

**Motorists Mutual**  
**Insurance Company®**  
471 East Broad Street, Columbus, Ohio 43215-3861

HOASTER GEBHARD &amp; CO

719 QUENTIN RD  
LEBANON PA 17042 6924

(717) 274-3360

POLICY NUMBER 33.309917-60E

EFFECTIVE DATE 06/20/2019



DIANOIAS EATERY LLC ET AL

## Schedule Of Forms And Endorsements

IL 7004 (01-87)

FORM NUMBER	EDITION DATE	TITLE	EFFECTIVE DATE
----------------	-----------------	-------	-------------------

## Forms Applicable To All Coverage Parts

IL 0021	11/1985	NUCLEAR ENERGY LIABILITY EXCLUSION (BROAD FORM)	06/20/2018
IL 0022	05/1987	EFFECTIVE TIME CHANGES - REPLACEMENT OF 12 NOON	06/20/2018
IL 0166	01/1999	PENNSYLVANIA CHANGES - ACTUAL CASH VALUE	06/20/2018
IL 0172	11/1993	PENNSYLVANIA CHANGES	06/20/2018
IL 0246	09/1996	PENNSYLVANIA CHANGES - CANCELLATION AND NONRENEWAL	06/20/2018
IL 0910	01/1981	PENNSYLVANIA NOTICE	06/20/2018
IL 0935	04/1998	EXCLUSION OF CERTAIN COMPUTER RELATED LOSSES	06/20/2018
IL 0985	01/2015	DISCLOSURE PURSUANT TO TERRORISM RISK INSURANCE ACT	06/20/2018
IL 7003	04/1996	ADDITIONAL POLICY PROVISIONS	06/20/2018
IL 7005	01/1987	SCHEDULE OF PREMISES	06/20/2018
IL 7007	01/1987	NAMED INSURED	06/20/2018
IL 7017	03/2000	EXCLUSION - ASBESTOS	06/20/2018
IL 7021	12/1994	LEAD LIABILITY EXCLUSION	06/20/2018
IL 7035	01/2015	EXCL PUNITIVE DAMAGES RELATED TO CERTIFIED ACT OF TERR	06/20/2018
IL 7037	01/2014	CONDITIONAL EXCLUSION OF TERRORISM	06/20/2018
IL 7042	12/2014	SELECT RESTAURANT ENDORSEMENT	06/20/2018
IL 7045	01/2015	EXCL ACTS OF TERRORISM INVOLVING NUCLEAR...CAP ON...LO	06/20/2018

## Property

CP 0010	04/2002	BUILDING AND PERSONAL PROPERTY COVERAGE FORM	06/20/2018
CP 0090	07/1988	COMMERCIAL PROPERTY CONDITIONS	06/20/2018
CP 1030	04/2002	CAUSE OF LOSS - SPECIAL FORM	06/20/2018
CP 7000	04/1996	COMMERCIAL PROPERTY COVERAGE FORM DECLARATIONS PAGE	06/20/2018
CP 7004	01/1987	ADDITIONAL INSURED PROVISIONS	06/20/2018
CP 7029	12/2014	SELECT PROPERTY PLUS ENDORSEMENT	06/20/2018
CP 7032	07/2004	EQUIPMENT BREAKDOWN ENDORSEMENT	06/20/2018
D CP 7070.001	04/1996	COMMERCIAL PROPERTY CHANGE ENDORSEMENT	04/26/2019
CP 7140	08/2007	EXCL OF LOSS DUE TO VIRUS OR BACTERIA	06/20/2018

## General Liability

CG 0001	12/2007	COMMERCIAL GENERAL LIABILITY COVERAGE FORM	06/20/2018
CG 0033	12/2007	LIQUOR LIABILITY COVERAGE FORM	06/20/2018
CG 2010	07/2004	ADD'L INSURED-OWNERS, LESSEES OR CONTRACTORS-FORM B	04/16/2019
CG 2037	07/2004	ADD'L INSURED - OWNERS, LESSEES OR CONTRACTORS - COMPLE	06/20/2018
CG 2147	12/2007	EMPLOYMENT - RELATED PRACTICES EXCLUSION	06/20/2018
CG 2160	09/1998	EXCL-YEAR 2000 COMPUTER RELATED AND OTHER .....	06/20/2018

POLICY NUMBER 33.309917-60E

EFFECTIVE DATE 06/20/2019



DIANOIAS EATERY LLC ET AL

### General Liability

CG 2167	12/2004	FUNGI OR BACTERIA EXCLUSION	06/20/2018
CG 2196	03/2005	SILICA OR SILICA-RELATED DUST EXCLUSION	06/20/2018
CG 7000	04/1996	COMMERCIAL GENERAL LIABILITY COV FORM DECLARATIONS PAG	06/20/2018
CG 7025	07/1993	LIQUOR LIABILITY COVERAGE FORM DECLARATION PAGE	06/20/2018
CG 7031	12/2007	SELECT GENERAL LIABILITY ENDORSEMENT	06/20/2018
CG 7035	10/2006	WAIVER OF TRANSFER RIGHTS OF RECOVERY...-SCHEDULED	04/16/2019
CG 7053	09/2009	DAMAGE BY SUBCONTRACTORS.	06/20/2018
D CG 7070.001	04/1996	GENERAL LIABILITY CHANGE ENDORSEMENT	04/16/2019
IL 7024	06/2000	EMPLOYMENT PRACTICES LIABILITY INSURANCE COVERAGE FORM	06/20/2018
IL 7025	06/2000	EMPLOYMENT PRACTICES LIABILITY INSURANCE	06/20/2018
IL 7026	06/2000	DEFINITION OF DAMAGES (PUNITIVE DAMAGES)	06/20/2018
IL 7036	03/2004	ADDITIONAL CONDITION - TWO OR MORE COVERAGE FORMS	06/20/2018

### Auto/Garage

CA SPIP01	XX/2013	COMMERCIAL AUTO SPECIAL INTEREST ENDORSEMENT 1	04/16/2019
CA 0001	10/2001	BUSINESS AUTO COVERAGE FORM	06/20/2018
CA 0051	12/2004	CHANGES - MOBILE EQUIPMENT SUBJECT TO MOTOR VEHICLE LA	06/20/2018
CA 2384	01/2006	EXCLUSION OF TERRORISM	06/20/2018
CA 7000	04/1996	BUSINESS AUTO COVERAGE PART DECLARATION PAGE	06/20/2018
CA 7002	04/1996	SCHEDULE OF COVERED AUTOS AND COVERAGES	06/20/2018
CA 7012	12/1992	PENNSYLVANIA FIRST PARTY BENEFITS	06/20/2018
D CA 7070.001	04/1996	BUSINESS AUTO CHANGE ENDORSEMENT	04/16/2019
CA 7075	06/2012	PENNSYLVANIA UNINSURED MOTORISTS COVERAGE-NONSTACKED	06/20/2018
CA 7076	06/2012	PENNSYLVANIA UNDERINSURED MOTORISTS COVERAGE-NONSTACKE	06/20/2018
CA 7084	12/2014	COMMERCIAL AUTO PLUS ENDORSEMENT	06/20/2018
CA 7112	10/2013	ADDITIONAL INSURED-DESIGNATED PERSON OR ORGANIZATION P	04/16/2019
CA 7118	06/2016	PENNSYLVANIA CHANGES	06/20/2018

### Commercial Umbrella

CX 7000	12/1996	COMMERCIAL UMBRELLA COVERAGE FORM DECLARATIONS PAGE	06/20/2018
CX 7001	12/2007	COMMERCIAL UMBRELLA COVERAGE FORM	06/20/2018
D CX 7070.001	12/1996	COMMERCIAL UMBRELLA COVERAGE CHANGE ENDORSEMENT	04/16/2019
CXSP GP106	XX/20XX	DAMAGE BY SUBCONTRACTORS	06/20/2018
CXSP GP107	12/2010	WAIVER OF OUR RIGHTS TO RECOVER FROM OTHERS...-SCHEDUL	04/16/2019
CXSP X100	12/2004	FUNGI OR BACTERIA EXCLUSION	06/20/2018
CXSP X101	XX/20XX	SILICA OR SILICA-RELATED DUST EXCLUSION	06/20/2018
CXSP X102	XX/20XX	EXCLUSION - VIOLATION OF STATUTES THAT GOVERN E-MAILS	06/20/2018
CXSP X116	03/2017	EXCLUSION - CYBER LIABILITY	06/20/2018
CXSP X27	XX/19XX	CROSS SUITS EXCLUSION	06/20/2018
CXSP X31B	XX/19XX	EMPLOYEE RETIREMENT INCOME SECURITY ACT(ERISA) EXCL	06/20/2018

POLICY NUMBER 33.309917-60E

EFFECTIVE DATE 06/20/2019



DIANOIAS EATERY LLC ET AL

### Commercial Umbrella

CXSP X33	XX/19XX	EMPLOYMENT-RELATED PRACTICES EXCLUSION	06/20/2018
CXSP X41	XX/19XX	KENTUCKY AND PENNSYLVANIA AMENDMENT	06/20/2018
CXSP X54	XX/19XX	PERSONAL PROPERTY CARE, CUSTODY OR CONTROL EXCL	06/20/2018
CXSP X57	XX/19XX	POLLUTION ABSOLUTE EXCLUSION	06/20/2018
CXSP X78	XX/19XX	ASBESTOS EXCLUSION	06/20/2018
CXSP X92	XX/19XX	HAULWAYS NOT COVERED	06/20/2018
CXSP X93	XX/19XX	LEAD LIABILITY EXCLUSION	06/20/2018
CXSP X96	04/1998	ABSOLUTE EXCLUSION - YEAR 2000 COMPUTER RELATED AND...	06/20/2018

### Cyber Coverage Insurance

IL 7075	07/2015	CYBER COVERAGE INSURANCE	06/20/2018
IL 7076	07/2015	CYBER COVERAGE POLICY DECLARATIONS	06/20/2018

### Workers Compensation

D WC 000000C	01/2015	WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE	06/20/2018
D WC 000001A	02/1989	WORKERS COMPENSATION & EMPLOYERS LIABILITY INS POLICY	06/20/2018
D WC 000406	08/1984	PREMIUM DISCOUNT ENDORSEMENT	06/20/2018
D WC 000414	07/1990	NOTIFICATION OF CHANGE IN OWNERSHIP ENDORSEMENT	06/20/2018
D WC 000421D	01/2015	CATASTROPHE (OTHER THAN CERTIFIED ACTS OF TERRORISM) P	06/20/2018
D WC 000422B	01/2015	TERRORISM RISK INSURANCE PGM REAUTHORIZATION ACT DISCL	06/20/2018
D WC 370601	04/1984	SPECIAL PA ENDORSEMENT - INSPECTION OF MANUALS	06/20/2018
D WC 370602	04/1984	PENNSYLVANIA NOTICE	06/20/2018
D WC 370603A	08/1995	PENNSYLVANIA ACT 86-1986 ENDORSEMENT	06/20/2018
D WC 370604	10/1999	PENNSYLVANIA EMPLOYER ASSESSMENT ENDORSEMENT	06/20/2018



POLICY NUMBER 33.309917-60E

EFFECTIVE DATE 06/20/2019



DIANOIAS EATERY LLC ET AL

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**Schedule Of Premises****IL 7005 (01-87)**

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PREMISES NUMBER	STREET	CITY	COUNTY	STATE	ZIP CODE
0001	2549 PENN AVE	PITTSBURGH	ALLEGHENY	PA	15222
				EFFECTIVE	06/20/2018

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POLICY NUMBER 33.309917-60E

EFFECTIVE DATE 06/20/2019



DIANOIAS EATERY LLC ET AL

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## Named Insured

IL 7007 (01-87)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

For the purpose of this insurance, the name shown in item I. will be shown on the declarations and shall mean the Named Insured (Item II). The name shown in item I. may act as the Named Insured for all purposes of the policy and a premium notice or notice of cancellation mailed to such entity shall be considered the same as mailing to the Named Insured as provided in the premium notice and Cancellation conditions of the policy.

I. Acting Named Insured: DIANOIAS EATERY LLC ET AL

II. Named Insured:

DIANOIAS EATERY LLC FEIN 812245812

DBA PIZZERIA DAVIDE

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MOTORISTS MUTUAL INSURANCE COMPANY

POLICY NUMBER 33.309917-60E



DIANOIAS EATERY LLC ET AL

## Nuclear Energy Liability Exclusion

IL 0021 (11-85)

(Broad Form)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following:

COMMERCIAL AUTO COVERAGE FORM  
 COMMERCIAL GENERAL LIABILITY COVERAGE FORM  
 COMMERCIAL EXCESS UMBRELLA COVERAGE FORM  
 OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE FORM

## 1. The insurance does not apply:

## A. Under any Liability Coverage, to "bodily injury" or "property damage":

(1) With respect to which an "insured" under the policy is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters, Nuclear Insurance Association of Canada or any of their successors, or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability; or

(2) Resulting from the "hazardous properties" of "nuclear material" and with respect to which (a) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (b) the "insured" is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.

## B. Under any Medical Payments coverage, to expenses incurred with respect to "bodily injury" resulting from the "hazardous properties" of "nuclear material" and arising out of the operation of a "nuclear facility" by any person or organization.

## C. Under any Liability Coverage, to "bodily injury" or "property damage" resulting from the "hazardous properties" of "nuclear material," if:

(1) The "nuclear material" (a) is at any "nuclear facility" owned by, or operated by or on behalf of, an "insured" or (b) has been discharged or dispersed therefrom;

(2) The "nuclear material" is contained in "spent fuel" or "waste" at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of an "insured;" or

(3) The "bodily injury" or "property damage" arises out of the furnishing by an "insured" of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any "nuclear facility," but if such facility is located within the United States of America, its territories or possessions or Canada, this exclusion (3) applies only to "property damage" to such "nuclear facility" and any property thereat.

## 2. As used in this endorsement:

"Hazardous properties" include radioactive, toxic or explosive properties;

"Nuclear material" means "source material," "Special nuclear material" or "by-product material;"

"Source material," "special nuclear material," and "by-product material" have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof;

"Spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a "nuclear reactor;"

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"Waste" means any waste material (a) containing "by-product material" other than the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its "source material" content, and (b) resulting from the operation by any person or organization of any "nuclear facility" included under the first two paragraphs of the definition of "nuclear facility."

"Nuclear facility" means:

- (a) Any "nuclear reactor;"
- (b) Any equipment or device designed or used for (1) separating the isotopes of uranium or plutonium, (2) processing or utilizing "spent fuel," or (3) handling, processing or packaging "waste;"

(c) Any equipment or device used for the processing, fabricating or alloying of "special nuclear material" if at any time the total amount of such material in the custody of the "insured" at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;

(d) Any structure, basin, excavation, premises or place prepared or used for the storage of disposal of "waste;"

and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations;

"Nuclear reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material;

"Property damage" includes all forms of radioactive contamination of property.

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DIANOIAS EATERY LLC ET AL

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## Effective Time Changes - Replacement Of 12 Noon

IL 0022 (05-87)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies the COMMON POLICY DECLARATIONS.

To the extent that coverage in this policy replaces coverage in other policies terminating noon standard time on the inception date of this policy, coverage under this policy shall not become effective until such other coverage has terminated.

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IL 0022 (05-87)

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## Pennsylvania Changes - Actual Cash Value

IL 0166 (01-99)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following:

BOILER AND MACHINERY COVERAGE FORM  
COMMERCIAL CRIME COVERAGE FORM  
COMMERCIAL INLAND MARINE COVERAGE FORM  
COMMERCIAL PROPERTY COVERAGE FORM  
FARM COVERAGE FORM  
STANDARD PROPERTY POLICY

The following is added to any provision which uses the term actual cash value:

Actual cash value is calculated as the amount it would cost to repair or replace Covered Property, at the time of loss or damage, with material of like kind and quality, subject to a deduction for deterioration, depreciation and obsolescence. Actual cash value applies to valuation of Covered Property regardless of whether that property has sustained partial or total loss or damage.

The actual cash value of the lost or damaged property may be significantly less than its replacement cost.

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IL 0166 (01-99)

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DIANOIAS EATERY LLC ET AL

## Pennsylvania Changes

IL 0172 (11-93)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following:

BOILER AND MACHINERY COVERAGE FORM  
 COMMERCIAL CRIME COVERAGE FORM  
 COMMERCIAL INLAND MARINE COVERAGE FORM  
 COMMERCIAL PROPERTY COVERAGE FORM

**A. For insurance provided under the:**

Boiler and Machinery Coverage Form  
 Commercial Crime Coverage Form  
 Commercial Inland Marine Coverage Form  
 Commercial Property Coverage Form

The **TRANSFER OF YOUR RIGHTS AND DUTIES UNDER THIS POLICY** Common Policy Condition is replaced by the following:

**F. TRANSFER OF YOUR RIGHTS AND DUTIES UNDER THIS POLICY**

Your rights and duties under this policy may not be transferred without our written consent except in the case of death of an individual named insured.

If you die, your rights and duties will be transferred to your legal representative but only while acting within the scope of duties as your legal representative. Until your legal representative is appointed, anyone having proper temporary custody of your property will have your rights and duties but only with respect to that property.

If you die, this Coverage Form will remain in effect as provided in 1. or 2. below, whichever is later:

1. For 180 days after your death regardless of the policy period shown in the Declarations, unless the insured property is sold prior to that date; or
2. Until the end of the policy period shown in the Declarations, unless the insured property is sold prior to that date.

Coverage during the period of time after your death is subject to all provisions of this policy including payment of any premium due for the policy period shown in the Declarations and any extension of that period.

**B. For insurance provided under the:**

Commercial Inland Marine Coverage Form  
 Commercial Property Coverage Form

The following is added to the **LOSS PAYMENT** Loss Condition and supersedes any provision to the contrary:

**NOTICE OF ACCEPTANCE OR DENIAL OF CLAIM**

1. Except as provided in 3. below, we will give you notice, within 15 working days after we receive a properly executed proof of loss, that we:
  - a. Accept your claim;
  - b. Deny your claim; or
  - c. Need more time to determine whether your claim should be accepted or denied.

If we deny your claim, such notice will be in writing, and will state any policy provision, condition or exclusion used as a basis for the denial.

If we need more time to determine whether your claim should be accepted or denied, the written notice will state the reason why more time is required.

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DIANOIAS EATERY LLC ET AL

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2. If we have not completed our investigation, we will notify you again in writing, within 30 days after the date of the initial notice as provided in 1.c. above, and thereafter every 45 days. The written notice will state why more time is needed to investigate your claim and when you may expect us to reach a decision on your claim.
  3. The notice procedures in 1. and 2. above do not apply if we have a reasonable basis, supported by specific information, to suspect that an insured has fraudulently caused or contributed to the loss by arson or other illegal activity. Under such circumstances, we will notify you of the disposition of your claim within a period of time reasonable to allow full investigation of the claim, after we receive a properly executed proof of loss.

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## Pennsylvania Changes - Cancellation And Nonrenewal

IL 0246 (09-96)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following:

BOILER AND MACHINERY COVERAGE FORM  
 BUSINESSOWNERS POLICY  
 COMMERCIAL AUTO COVERAGE FORM  
 COMMERCIAL CRIME COVERAGE FORM \*  
 COMMERCIAL GENERAL LIABILITY COVERAGE FORM  
 COMMERCIAL PROPERTY COVERAGE FORM  
 COMMERCIAL INLAND MARINE COVERAGE FORM  
 OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE FORM

\* This endorsement does not apply to coverage provided for employee dishonesty (Coverage Form A) or public employee dishonesty (Coverage Forms O and P)

A. The CANCELLATION Common Policy Condition is replaced by the following:

### CANCELLATION

1. The first Named Insured shown in the Declarations may cancel this policy by writing or giving notice of cancellation.

2. CANCELLATION OF POLICIES IN EFFECT FOR LESS THAN 60 DAYS

We may cancel this policy by mailing or delivering to the first Named Insured written notice of cancellation at least 30 days before the effective date of cancellation.

3. CANCELLATION OF POLICIES IN EFFECT FOR 60 DAYS OR MORE

If this policy has been in effect for 60 days or more or if this policy is a renewal of a policy we issued, we may cancel this policy only for one or more of the following reasons:

- a. You have made a material misrepresentation which affects the insurability of the risk. Notice of cancellation will be mailed or delivered at least 15 days before the effective date of cancellation.
- b. You have failed to pay a premium when due, whether the premium is payable directly to us or our agents or indirectly under a premium finance plan or extension of credit. Notice of cancellation will be mailed at least 15 days before the effective date of cancellation.

c. A condition, factor or loss experience material to insurability has changed substantially or a substantial condition, factor or loss experience material to insurability has become known during the policy period. Notice of cancellation will be mailed or delivered at least 60 days before the effective date of cancellation.

d. Loss of reinsurance or a substantial decrease in reinsurance has occurred, which loss or decrease, at the time of cancellation, shall be certified to the Insurance Commissioner as directly affecting in-force policies. Notice of cancellation will be mailed or delivered at least 60 days before the effective date of cancellation.

e. Material failure to comply with policy terms, conditions or contractual duties. Notice of cancellation will be mailed or delivered at least 60 days before the effective date of cancellation.

f. Other reasons that the Insurance Commissioner may approve. Notice of cancellation will be mailed or delivered at least 60 days before the effective date of cancellation.

This policy may also be cancelled from inception upon discovery that the policy was obtained through fraudulent statements, omissions or concealment of facts material to the acceptance of the risk or to the hazard assumed by us.

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4. We will mail or deliver our notice to the first Named Insured's last mailing address known to us. Notice of cancellation will state the specific reasons for cancellation.
5. Notice of cancellation will state the effective date of cancellation. The policy period will end on that date.
6. If this policy is cancelled, we will send the first Named Insured any premium refund due. If we cancel, the refund will be pro rata and will be returned within 10 business days after the effective date of cancellation. If the first Named Insured cancels, the refund may be less than pro rata and will be returned within 30 days after the effective date of cancellation. The cancellation will be effective even if we have not made or offered a refund.
7. If notice is mailed, it will be by registered or first class mail. Proof of mailing will be sufficient proof of notice.

B. The following are added and supersede any provisions to the contrary:

1. NONRENEWAL

If we decide not to renew this policy, we will mail or deliver written notice of nonrenewal, stating the specific reasons for nonrenewal, to the first Named Insured at least 60 days before the expiration date of the policy.

2. INCREASE OF PREMIUM

If we increase your renewal premium, we will mail or deliver to the first Named Insured written notice of our intent to increase the premium at least 30 days before the effective date of the premium increase.

Any notice of nonrenewal or renewal premium increase will be mailed or delivered to the first Named Insured's last known address. If notice is mailed, it will be by registered or first class mail. Proof of mailing will be sufficient proof of notice.

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DIANOIAS EATERY LLC ET AL

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## Pennsylvania Notice

An Insurance Company, its agents, employees, or service contractors acting on its behalf, may provide services to reduce the likelihood of injury, death or loss. These services may include any of the following or related services incident to the application for, issuance, renewal or continuation of, a policy of insurance:

1. surveys;
2. consultation or advice; or
3. inspections.

## IL 0910 (01-81)

The "Insurance Consultation Services Exemption Act" of Pennsylvania provides that the Insurance Company, its agents, employees or service contractors acting on its behalf, is not liable for damages from injury, death or loss occurring as a result of any act or omission by any person in the furnishing of or the failure to furnish these services.

The Act does not apply:

1. if the injury, death or loss occurred during the actual performance of the services and was caused by the negligence of the insurance company, its agents, employees or service contractors;
2. to consultation services required to be performed under a written service contract not related to a policy of insurance; or
3. If any acts or omissions of the insurance company, its agents, employees or service contractors are judicially determined to constitute a crime, actual malice or gross negligence.

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IL 0910 (01-81)

POLICY NUMBER 33.309917-60E



DIANOIAS EATERY LLC ET AL

## Exclusion of Certain Computer - Related Losses

IL 0935 (04-98)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following:

BOILER AND MACHINERY COVERAGE FORM  
COMMERCIAL CRIME COVERAGE FORM  
COMMERCIAL INLAND MARINE COVERAGE FORM  
COMMERCIAL PROPERTY COVERAGE PART  
STANDARD PROPERTY POLICY

A. We will not pay for loss ("loss") or damage caused directly or indirectly by the following. Such loss ("loss") or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss ("loss") or damage.

1. The failure, malfunction or inadequacy of:

a. Any of the following, whether belonging to any insured or to others:

- (1) Computer hardware, including microprocessors;
- (2) Computer application software;
- (3) Computer operating systems and related software;
- (4) Computer networks
- (5) Microprocessors (computer chips) not part of any computer system; or
- (6) Any other computerized or electronic equipment or components; or

b. Any other products, and any services, data or functions that directly use or rely upon, in any manner, any of the items listed in Paragraph A.1.a. of this endorsement;

due to the inability to correctly recognize, process, distinguish, interpret or accept one or more dates or times. An example is the inability of computer software to recognize the year 2000.

2. Any advice, consultation, design, evaluation, inspection, installation, maintenance, repair, replacement or supervision provided or done by you or for you to determine, rectify or test for, any potential or actual problems described in Paragraph A.1. of this endorsement.

B. If an excluded Cause of Loss as described in Paragraph A. of this endorsement results:

1. In a Covered Cause of Loss under the Boiler And Machinery Coverage Form, the Commercial Crime Coverage Form, the Commercial Inland Marine Coverage Form or the Standard Property Policy; or

2. Under the Commercial Property Coverage Part:

- a. In a "Specified Cause of Loss" under the Causes of Loss - Special Form; or
- b. In a Covered Cause of Loss under the Causes of Loss - Basic Form or the Causes Loss - Broad Form;

we will pay only for the loss ("loss") or damage caused by such "Specified Cause of Loss" or Covered Cause of Loss.

C. We will not pay for repair, replacement or modification of any items in Paragraphs A.1.a. and A.1.b. of this endorsement to correct any deficiencies or change any feature.

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DIANOIAS EATERY LLC ET AL

## Disclosure Pursuant To Terrorism Risk Insurance Act

IL 0985 (01-15)

THIS ENDORSEMENT IS ATTACHED TO AND MADE PART OF YOUR POLICY IN RESPONSE TO THE DISCLOSURE REQUIREMENTS OF THE TERRORISM RISK INSURANCE ACT. THIS ENDORSEMENT DOES NOT GRANT ANY COVERAGE OR CHANGE THE TERMS AND CONDITIONS OF ANY COVERAGE UNDER THE POLICY.

### SCHEDULE

#### SCHEDULE - PART I

Terrorism Premium (Certified Acts) \$0.00

#### SCHEDULE - PART II

Federal share of terrorism losses 85% Year: 2015 (Refer to Paragraph B. in this endorsement.)

Federal share of terrorism losses 84% Year: 2016 (Refer to Paragraph B. in this endorsement.)

Federal share of terrorism losses 83% Year: 2017 (Refer to Paragraph B. in this endorsement.)

Federal share of terrorism losses 82% Year: 2018 (Refer to Paragraph B. in this endorsement.)

Federal share of terrorism losses 81% Year: 2019 (Refer to Paragraph B. in this endorsement.)

Federal share of terrorism losses 80% Year: 2020 (Refer to Paragraph B. in this endorsement.)

#### A. Disclosure of Premium

In accordance with the federal Terrorism Risk Insurance Act, we are required to provide you with a notice disclosing the portion of your premium, if any, attributable to coverage for terrorist acts certified under that Act. The portion of your premium attributable to such coverage is shown in the Schedule of this endorsement or in the policy Declarations.

#### B. Disclosure Of Federal Participation In Payment Of Terrorism Losses

The United States Government, Department of the Treasury, will pay a share of terrorism losses insured under the federal program. The federal share equals a percentage (as shown in Part II of the Schedule of this endorsement or in the policy Declarations) of that portion of the amount of such insured losses that exceeds the applicable insurer retention. However, if aggregate insured losses attributable to terrorist acts certified under the Terrorism Risk Insurance Act exceed \$100 billion in a calendar year, the Treasury shall not make any payment for any portion of the amount of such losses that exceeds \$100 billion.

#### C. Cap On Insurer Participation in Payment Of Terrorism Losses

If aggregate insured losses attributable to terrorist acts certified under the Terrorism Risk Insurance Act exceed \$100 billion in a calendar year and we have met our insurer deductible under the Terrorism Risk Insurance Act, we shall not be liable for the payment of any portion of the amount of such losses that exceeds \$100 billion, and in such case insured losses up to that amount are subject to pro rata allocation in accordance with procedures established by the Secretary of the Treasury.

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## ADDITIONAL POLICY PROVISIONS

IL 7003 (04-96)

MOTORISTS MUTUAL INSURANCE COMPANY

471 E. BROAD STREET COLUMBUS, OH 43215-3861

### INSURING AGREEMENT

In return for the payment of the premium, and subject to all the terms of this policy, we agree with you to provide the insurance as stated in the policy.

### COMMON POLICY CONDITIONS

All Coverage Forms included in this policy are subject to the following conditions.

#### A. CANCELLATION

1. The first Named Insured shown in the Declarations may cancel this policy by mailing or delivering to us advance written notice of cancellation.
2. We may cancel this policy by mailing or delivering to the first Named Insured written notice of cancellation at least:
  - a. 10 days before the effective date of cancellation if we cancel for nonpayment of premium; or
  - b. 30 days before the effective date of cancellation if we cancel for any other reason.
3. We will mail or deliver our notice to the first Named Insured's last mailing address known to us.
4. Notice of cancellation will state the effective date of cancellation. The policy period will end on that date.
5. If this policy is cancelled, we will send the first Named Insured any premium refund due. If we cancel, the refund will be pro rata. If the first Named Insured cancels, the refund may be less than pro rata. The cancellation will be effective even if we have not made or offered a refund.
6. If notice is mailed, proof of mailing will be sufficient proof of notice.

#### B. CHANGES

This policy contains all the agreements between you and us concerning the insurance afforded. The first Named Insured shown in the Declarations is authorized to make changes in the terms of this policy with our consent. This policy's terms can be amended or waived only by endorsement issued by us and made a part of this policy.

#### C. EXAMINATION OF YOUR BOOKS AND RECORDS

We may examine and audit your books and records as they relate to this policy at any time during the policy period and up to three years afterward.

#### D. INSPECTIONS AND SURVEYS

We have the right but are not obligated to:

1. Make inspections and surveys at any time;
2. Give you reports on the conditions we find; and
3. Recommend changes.

Any inspections, surveys, reports or recommendations relate only to insurability and the premiums to be charged. We do not make safety inspections. We do not undertake to perform the duty of any person or organization to provide for the health or safety of workers or the public. And we do not warrant that conditions:

1. Are safe or healthful; or
2. Comply with laws, regulations, codes or standards.

This condition applies not only to us, but also to any rating, advisory, rate service or similar organization which makes insurance inspections, surveys, reports or recommendations.

#### E. PREMIUMS

The first Named Insured shown in the Declarations:

1. Is responsible for the payment of all premiums; and
2. Will be the payee for any return premiums we pay.

#### F. TRANSFER OF YOUR RIGHTS AND DUTIES UNDER THIS POLICY

Your rights and duties under this policy may not be transferred without our written consent except in the case of death of an individual named insured.

If you die, your rights and duties will be transferred to your legal representative but only while acting within the scope of duties as your legal representative. Until your legal representative is appointed, anyone having proper temporary custody of your property will have your rights and duties but only with respect to that property.

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DIANOIAS EATERY LLC ET AL

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MUTUAL PROVISIONS

**Annual Meeting** The annual meeting of the membership of the company is held at its home office in Columbus, Ohio on the fourth Monday in April, of each year at one o'clock p.m. unless said day is a holiday in which event the next succeeding day, not a holiday.

**Nonassessable** This policy is nonassessable. While this policy is in force, the named insured is a member of the company and, as such, is entitled to the privileges provided by the by-laws of the company.

**In Witness Whereof**, Motorists Mutual Insurance Company has caused this policy to be signed by its President and Secretary at Columbus, Ohio.

A handwritten signature in cursive script, appearing to read "Marchelle E. Moore".

Marchelle E. Moore  
Corporate Secretary

A handwritten signature in cursive script, appearing to read "Thomas J. Obrokta, Jr.".

Thomas J. Obrokta, Jr.  
President

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MOTORISTS MUTUAL INSURANCE COMPANY

POLICY NUMBER 33.309917-60E



DIANOIAS EATERY LLC ET AL

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## Exclusion - Asbestos

IL 7017 (03-00)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS POLICY  
COMMERCIAL GENERAL LIABILITY COVERAGE FORM  
OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE FORM  
GARAGE COVERAGE FORM  
BUSINESS AUTO COVERAGE FORM

This insurance does not apply to claims, suits, actions or proceedings by or against any insured, or any person or organization for whom the insured is legally liable, for "bodily injury," "property damage," "personal and advertising injury" or any expense arising out of, or related in any way to, asbestos.

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MOTORISTS MUTUAL INSURANCE COMPANY



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DIANOIAS EATERY LLC ET AL

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## Lead Liability Exclusion

IL 7021 (12-94)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS POLICY  
COMMERCIAL GENERAL LIABILITY COVERAGE FORM  
OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE FORM  
GARAGE COVERAGE FORM  
BUSINESS AUTO COVERAGE FORM

This insurance does not apply to:

1. Any actual or alleged "bodily injury" arising out of the ingestion, inhalation, or absorption of lead in any form;
2. Any actual or alleged "property damage," "personal injury" or "advertising injury" arising out of any form of lead;
3. Any loss, cost or expense arising out of any:
  - a. Request, demand or order that any "insured" or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize or in any way respond to or assess the effects of lead; or
  - b. Claim or suit by or on behalf of any governmental authority for damages resulting from testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing or in any way responding to or assessing the lead.

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MOTORISTS MUTUAL INSURANCE COMPANY

POLICY NUMBER 33.309917-60E



DIANOIAS EATERY LLC ET AL

## Exclusion Of Punitive Damages Related To A Certified Act Of Terrorism

IL 7035 (01-15)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS LIABILITY COVERAGE FORM  
COMMERCIAL GENERAL LIABILITY COVERAGE FORM  
LIQUOR LIABILITY COVERAGE FORM  
OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE FORM  
UNDERGROUND STORAGE TANK POLICY  
COMMERCIAL UMBRELLA POLICY

A. The following exclusion is added:

This insurance does not apply to:

**TERRORISM PUNITIVE DAMAGES**

Damages arising, directly or indirectly, out of a "certified act of terrorism" that are awarded as punitive damages.

B. The following definition is added:

"Certified act of terrorism" means an act that is certified by the Secretary of the Treasury, in accordance with the provisions of the federal Terrorism Risk Insurance Act, to be an act of terrorism pursuant to such Act. The criteria contained in the Terrorism Risk Insurance Act for a "certified act of terrorism" include the following:

1. The act resulted in aggregate losses in excess of \$5 million in the aggregate, attributable to all types of insurance subject to the Terrorism Insurance Act; and
2. The act is a violent act or an act that is dangerous to human life, property or infrastructure and is committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

C. The terms and limitations of any terrorism exclusion, or the inapplicability or omission of a terrorism exclusion, do not serve to create coverage for injury or damage that is otherwise excluded under this Coverage Part.

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MOTORISTS MUTUAL INSURANCE COMPANY

IL 7035 (01-15)

POLICY NUMBER 33.309917-60E



DIANOIAS EATERY LLC ET AL

## Conditional Exclusion Of Terrorism (Relating To Disposition Of Federal Terrorism Risk Insurance Act

IL 7037 (01-14)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following:

COMMERCIAL INLAND MARINE COVERAGE FORM  
COMMERCIAL PROPERTY COVERAGE FORM  
BUSINESSOWNERS POLICY  
COMMERCIAL GENERAL LIABILITY COVERAGE FORM  
LIQUOR LIABILITY COVERAGE FORM  
OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE FORM  
UNDERGROUND STORAGE TANK POLICY  
COMMERCIAL UMBRELLA POLICY

The Exception Covering Certain Fire Losses (Paragraph B.2.) applies to property located in the states of Maine, Massachusetts, Pennsylvania, Rhode Island, Wisconsin and West Virginia.

A. Section I. Property and Section II. Liability are amended as follows:

### 1. Applicability Of The Provisions Of This Endorsement

a. The provisions of this endorsement will become applicable commencing on the date when any one or more of the following first occurs. But if your policy (meaning the policy period in which this endorsement applies) begins after such date, then the provisions of this endorsement becomes applicable on the date your policy begins.

(1) The federal Terrorism Risk Insurance Program ("Program"), established by the Terrorism Risk Insurance Act, has terminated with respect to the type of insurance provided under this Coverage Form; or

(2) A renewal, extension or replacement of the Program has become effective without a requirement to make terrorism coverage available to you and with revisions that:

(a) Increase our statutory percentage deductible under the Program for terrorism losses. (That deductible determines the amount of all certified terrorism losses we must pay in a calendar year, before the federal government shares in subsequent payment of certified terrorism losses.); or

(b) Decrease the federal government's statutory percentage Share in potential terrorism losses above such deductible; or

(c) Redefine terrorism or make insurance coverage for terrorism subject to provisions or requirements that differ from those that apply to other types of events or occurrences under this policy.

b. If the provisions of this endorsement become applicable, such provisions:

(1) Supersede any terrorism endorsement already endorsed to this policy that addresses "certified acts of terrorism" and/or "other acts of terrorism," but only with respect to loss or injury or damage from an incident(s) of terrorism (however defined) that occurs on or after the date when the provisions of this endorsement become applicable; and

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- (2) Remain applicable unless we notify you of changes in these provisions, in response to federal law.
- c. If the provisions of this endorsement do NOT become applicable, any terrorism endorsement already endorsed to this policy, that addresses "certified acts of terrorism" and/or "other acts of terrorism," will continue in effect unless we notify you of changes to that endorsement in response to federal law.
2. The following definition is added and applies under this endorsement wherever the term terrorism is enclosed in quotation marks. "Terrorism" means activities against persons, organizations or property of any nature:
- a. That involve the following or preparation for the following:
- (1) Use or threat of force or violence; or
  - (2) Commission or threat of a dangerous act; or
  - (3) Commission or threat of an act that interferes with or disrupts an electronic, communication, information, or mechanical system; and
- b. When one or both of the following applies:
- (1) The effect is to intimidate or coerce a government or the civilian population or any segment thereof, or to disrupt any segment of the economy; or
  - (2) It appears that the intent is to intimidate or coerce a government, or to further political, ideological, religious, social or economic objectives or to express (or express opposition to) a philosophy or ideology.

B. With respect to the Boiler and Machinery Coverage Form, Commercial Crime Coverage Form, Commercial Inland Marine Coverage Form, Commercial Property Coverage Form, Businessowners Special Property Coverage Form, Business Auto Coverage Form - Physical Damage Coverage, Garage Coverage Form - Physical Damage Coverage:

1. The following exclusion is added:

#### EXCLUSION OF TERRORISM

We will not pay for loss or damage caused directly or indirectly by "terrorism," including action in hindering or defending against an actual or expected incident of "terrorism." Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss. But this exclusion applies only when one or more of the following are attributed to an incident of "terrorism":

- a. The "terrorism" is carried out by means of the dispersal or application of radioactive material, or through the use of a nuclear weapon or device that involves or produces a nuclear reaction, nuclear radiation or radioactive contamination; or
- b. Radioactive material is released, and it appears that one purpose of the "terrorism" was to release such material; or
- c. "terrorism" is carried out by means of the dispersal or application of a pathogenic or poisonous biological or chemical materials; or
- d. Pathogenic or poisonous biological or chemical materials are released, and it appears that one purpose of the "terrorism" was to release such materials; or

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DIANOIAS EATERY LLC ET AL

- e. The total of insured damage to all types of property in the United States, its territories and possessions, Puerto Rico and Canada exceeds \$25,000,000. In determining whether the \$25,000,000 threshold is exceeded, we will include all insured damage sustained by property of all persons and entities affected by the "terrorism" and business interruption losses sustained by owners or occupants of the damaged property. For the purpose of this provision, insured damage means damage that is covered by any insurance plus damage that would be covered by any insurance but for the application of any terrorism exclusions. Multiple incidents of "terrorism" which occurs within a 72-hour period and appear to be carried out in concert or to have a related purpose or common leadership will be deemed to be one incident, for the purpose of determining whether the threshold is exceeded.

With respect to this item 1.e., the immediately preceding paragraph describes the threshold used to measure the magnitude of an incident of "terrorism" and the circumstances in which the threshold will apply, for the purpose of determining whether this Exclusion will apply to that incident. When the Exclusion applies to an incident of "terrorism," there is no coverage under this Coverage Form.

## 2. Exception Covering Certain Fire Losses

The following exception to the Exclusion Of Terrorism applies only to property located in the states of Maine, Massachusetts, Pennsylvania, Rhode Island, Wisconsin and West Virginia.

If "terrorism" results in fire, we will pay for the loss or damage caused by that fire, subject to all applicable policy provisions including the Limit of Insurance on the affected property. Such coverage for fire applies only to direct loss or damage by fire to Covered Property. Therefore, for example, the coverage does not apply to insurance provided under Business Income and/or Extra Expense coverages or endorsements that apply to those coverages.

## 3. Application Of Other Exclusions

- When the Exclusion Of Terrorism applies in accordance with the terms of Paragraph 1.a. or 1.b., such exclusion applies without regard to the Nuclear Hazard Exclusion in this Coverage Form.
- The terms and limitations of any terrorism exclusion, or the inapplicability or omission of a terrorism exclusion, do not serve to create coverage for any loss or damage which would otherwise be excluded under this Coverage Form as losses excluded by the Nuclear Hazard Exclusion or the War And Military Action Exclusion.

C. Except with respect to the Boiler and Machinery Coverage Form, Commercial Crime Coverage Form, Commercial Inland Marine Coverage Form, Commercial Property Coverage Form, Businessowners Special Property Coverage Form, Business Auto Coverage Form - Physical Damage Coverage, Garage Coverage Form - Physical Damage Coverage:

- The following definition is added and applies under this endorsement wherever the phrase any injury or damage, is enclosed in quotation marks:

"Any injury or damage" means any injury or damage covered under this Coverage Form or any applicable endorsement, and includes but is not limited to "bodily injury," "property damage" or "personal and advertising injury," as may be defined under this Coverage Form or any applicable endorsement.

- The following exclusion is added:

### EXCLUSION OF TERRORISM

We will not pay for "any injury or damage" caused directly or indirectly by "terrorism," including action in hindering or defending against an actual or expected incident of "terrorism." "Any injury or damage" is excluded regardless of any other cause or event that contributes concurrently or in any sequence to such injury or damage. But this exclusion applies only when one or more of the following are attributed to an incident of "terrorism":

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- a. The "terrorism" is carried out by means of the dispersal or application of radioactive material, or through the use of a nuclear weapon or device that involves or produces a nuclear reaction, nuclear radiation or radioactive contamination; or
- b. Radioactive material is released, and it appears that one purpose of the "terrorism" was to release such material; or
- c. The "terrorism" is carried out by means of the dispersal or application of pathogenic or poisonous biological or chemical materials; or
- d. Pathogenic or poisonous biological or chemical materials are released, and it appears that one purpose of the "terrorism" was to release such materials; or
- e. The total of insured damage to all types of property exceeds \$25,000,000. In determining whether the \$25,000,000 threshold is exceeded, we will include all insured damage sustained by property of all persons and entities affected by the "terrorism" and business interruption losses sustained by owners or occupants of the damaged property. For the purpose of this provision, insured damage means damage that is covered by any insurance plus damage that would be covered by any insurance but for the application of any terrorism exclusions; or

- f. Fifty or more persons sustain death or serious physical injury. For the purposes of this provision, serious physical injury means:

- (1) Physical injury that involves a substantial risk of death; or
- (2) Protracted and obvious physical disfigurement; or
- (3) Protracted loss of or impairment of the function of a bodily member or organ.

Multiple incidents of "terrorism" which occur within a 72-hour period and appear to be carried out in concert or to have a related purpose or common leadership will be deemed to be one incident, for the purpose of determining whether the thresholds in Paragraphs 2.e. or 2.f. are exceeded.

With respect to this Exclusion, Paragraphs 2.e. and 2.f. described the threshold used to measure the magnitude of an incident of "terrorism" and the circumstances in which the threshold will apply, for the purpose of determining whether this Exclusion will apply to that incident. When the Exclusion applies to an incident of "terrorism," there is no coverage under this Coverage Form. In the event of any incident of "terrorism" that is not subject to this Exclusion, coverage does not apply to "any injury or damage" that is otherwise excluded under this Coverage Form.

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MOTORISTS MUTUAL INSURANCE COMPANY

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DIANOIAS EATERY LLC ET AL

## Select Restaurant Endorsement

IL 7042 (12-14)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

### I. BUSINESS INCOME AND EXTRA EXPENSE COVERAGE

This coverage modifies insurance provided under the following:

BUILDING AND PERSONAL PROPERTY COVERAGE FORM

CAUSES OF LOSS - SPECIAL FORM

This coverage is subject to the provisions, including exclusions and limitations, applicable to the Building and Personal Property Coverage Form and the Causes of Loss - Special Form, except as provided below.

The following is added to Paragraph A.4. Additional Coverages of the Building and Personal Property Coverage Form.

#### A. COVERAGE

##### Business Income

We will pay for the actual loss of Business Income you sustain due to the necessary "suspension" of your "operations" during the "period of restoration." The "suspension" must be caused by direct physical loss of or damage to property at the described premises, including personal property in the open (or in a vehicle) within 1,000 feet of the described premises. The loss or damage must be caused by or result from a Covered Cause of Loss.

With respect to the requirements set forth in the preceding paragraph, if you occupy only part of the site at which the described premises are located, your premises means;

1. The portion of the building which you rent, lease or occupy; and
2. Any area within the building or on the site which the described premises are located, if that area services, or is used to gain access to, the described premises.

We will only pay for loss of Business Income that you sustain during the "period of restoration" and that occurs within 12 consecutive months after the date of direct physical loss or damage.

Business Income means:

1. The Net Income (Net Profit or Loss before income taxes) that would have been earned or incurred if no physical loss or damage had occurred, but not including any Net Income that would likely have been earned as a result of an increase in the volume of business due to favorable business conditions caused by the impact of the Covered Cause of Loss on customers or on other businesses; and for manufacturing risks, net income includes the net sales value of production.
2. The continuing normal operating expenses incurred, including payroll.
3. Rental Value

Rental Value means Business Income that consists of:

- a. Net Income (Net Profit or Loss before income taxes) that would have been earned or incurred as rental income from tenant occupancy of the premises described in the Declarations as furnished and equipped by you, including fair rental value of any portion of the described premises which is occupied by you; and
- b. Continuing normal operating expenses incurred in connection with that premises, including:
  - (1) Payroll; and
  - (2) The amount of charges which are the legal obligation of the tenant(s) but would otherwise be your obligations.

##### Extended Business Income

If the necessary "suspension" of your "operations" produces a Business Income loss payable under this policy, we will pay for the actual loss of Business Income you incur during the period that:

1. Begins on the date property, except finished stock, is actually repaired, rebuilt or replaced and "operations" are resumed; and



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## 2. Ends on the earlier of:

a. The date you could restore your "operations," with reasonable speed, to the level which would generate the Business Income amount that would have existed if no direct physical loss or damage had occurred; or

b. 30 consecutive days after the date determined in Paragraph (1) above.

However, Extended Business Income does not apply to loss of Business Income incurred as a result of unfavorable business conditions caused by the impact of the Covered Cause of Loss in the area where the described premises are located.

Loss of Business Income must be caused by direct physical loss or damage at the described premises caused by or resulting from any Covered Cause of Loss.

**Extra Expense Coverage**

We will pay necessary Extra Expense you incur during the "period of restoration" that you would not have incurred if there had been no direct physical loss or damage to property at the described premises, including personal property in the open (or in a vehicle) within 1,000 feet of the described premises, caused by or resulting from a Covered Cause of Loss.

With respect to the requirements set forth in the preceding paragraph, if you occupy only part of the site at which the described premises are located, your premises means:

1. That portion of the building which you rent, lease or occupy; and
2. Any area within the building or on the site which the described premises are located, if that area services, or is used to gain access to, the described premises.

Extra Expense means expense incurred:

1. To avoid or minimize the "suspension" of business and to continue "operations":
  - a. At the described premises; or

b. At replacement premises or at temporary locations, including:

- (1) Relocation expenses; and
- (2) Costs to equip and operate the replacement or temporary locations.

2. To minimize the "suspension" of business if you cannot continue "operations."

3. To repair or replace any property; or

4. To research, replace or restore the lost information on damaged valuable papers and records:

to the extent it reduces the amount of loss that otherwise would have been payable under this Business Income and Extra Expense Additional Coverage.

We will only pay for Extra Expense that occurs within 12 consecutive months after the date of direct physical loss or damage.

**B. DEFINITIONS**

With respect to this Business Income and Extra Expense Additional Coverage:

1. "Operations" means your business activities occurring at the described premises.

2. "Period of Restoration" means the period of time that:

- a. Begins with the date of direct physical loss or damage caused by or resulting from any Covered Cause of Loss at the described premises; and
- b. Ends on the date when the property, at the described premises, should be repaired, rebuilt or replaced with reasonable speed and similar quality.

"Period of restoration" does not include any increased period required due to the enforcement of any ordinance or law that:

- a. Regulates the construction, use or repair, or requires the tearing down of any property; or



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- b. Requires any insured or others to test for, monitor, clean-up, remove, contain, treat, detoxify or neutralize, or in any way respond to or assess the effects of "pollutants."

The expiration date of the policy will not cut short the "period of restoration."

3. "Suspension" means:

- a. The slowdown or cessation of your business activities; or
- b. That a part of all of the described premises is rendered untenable, if coverage for Business Income including "Rental Value" or "Rental Value" applies.

This is an additional amount of insurance.

No deductible applies to this coverage.

## II. HEALTH DEPARTMENT SHUTDOWN COVERAGE

This coverage modifies insurance provided under the following:

### BUILDING AND PERSONAL PROPERTY COVERAGE FORM CAUSES OF LOSS - SPECIAL FORM

This coverage is subject to the provisions, including exclusions and limitations, applicable to the Building and Personal Property Coverage Form and the Causes of Loss - Special Form, except as provided below.

The following is added to Paragraph A.4. Additional Coverages of the Building and Personal Property Coverage Form.

#### A. COVERAGE

1. We will pay for the actual loss of "business income" you sustain due to the "suspension" of your "operations" if the Health Department or other governmental authority orders your described premises closed due to the discovery or suspicion of Food Contamination.

Food Contamination means an incidence of food poisoning to one or more of your customers as a result of:

- a. Tainted food you purchased;
- b. A "communicable disease" transmitted through one or more of your employees.

2. If the Health Department or other governmental authority orders your described premises closed due to the discovery or suspicion of Food Contamination, we will also pay:

- a. Your expense to clean your equipment as required by the Health Department or other governmental authority;
- b. Your cost to replace the food which is, or is suspected to be contaminated;
- c. Your expense to provide necessary medical tests or vaccinations for your infected employees. However, we will not pay for any expense that is otherwise covered under a Workers' Compensation Policy;
- d. Your reimbursement if you paid for doctor's care, hospitalization or necessary blood work of infected patrons.

3. We will not pay any fines or penalties levied against you by the Health Department or any other governmental authority as a result of the discovery or suspicion of food contamination at the described premises.

#### B. LIMITS OF INSURANCE

1. The most we will pay under Paragraph II.A.1. is \$50,000.
2. The most we will pay under Paragraph II.A.2. is \$5,000.

This is an additional amount of insurance.

No deductible applies to this coverage.

#### C. LOSS CONDITIONS

For the purposes of this coverage, the following is added to the Duties in the Event of Loss or Damage under Loss Conditions of the Building And Personal Property Coverage Form:

You must:

1. Take all reasonable steps to diminish the loss and avoid further loss; and
2. Resume all of your "operations" as quickly as possible. If you do not resume "operations," or do not resume "operations" as quickly as possible, we will pay based on the time it would have taken to resume "operations" as quickly as possible.

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**D. DEFINITIONS**

With respect to this Health Department Shutdown Additional Coverage:

1. "Business Income" means:
  - a. Net Income (Net Profit or Loss before income taxes) that would have been earned or incurred if no Food Contamination had occurred;
  - b. Operating expenses incurred, including payroll, necessary to resume "operations" with the same quality of service that existed just before the order occurred; and
  - c. Extra advertising costs to restore your reputation.
2. "Communicable Disease" means a bacterial microorganism transmitted through human contact with food.
3. "Operations" means your business activities occurring at the described premises.
4. "Suspension" means:
  - a. The slowdown or cessation of your business activities; or
  - b. That a part of all of the described premises is rendered untenable, if coverage for Business Income including "Rental Value" or "Rental Value" applies.

**III. CUSTOMERS' PROPERTY COVERAGE**

This coverage modifies insurance provided under the following:

**BUILDING AND PERSONAL PROPERTY COVERAGE FORM**  
**CAUSES OF LOSS - SPECIAL FORM**

This coverage is subject to the provisions, including exclusions and limitations, applicable to the Building and Personal Property Coverage Form and the Causes of Loss - Special Form, except as provided below.

The following is added to Paragraph A.4. Additional Coverages of the Building and Personal Property Coverage Form.

**A. COVERAGE**

We will pay for direct physical loss or damage to property of your customers while on the described premises from any Covered Cause of Loss. We will also pay for the cost of labor, materials or services furnished or arranged by you on personal property of others as a result of a Covered Cause of Loss.

**B. LIMITS OF INSURANCE**

The most we will pay under Customers' Property Coverage is \$5,000 but not more than \$1,000 for the property of any one customer.

This is an additional amount of insurance.

No deductible applies to this coverage.

**IV. SPOILAGE OR CONTAMINATION BY A REFRIGERANT**

This coverage modifies insurance provided under the following:

**BUILDING AND PERSONAL  
 PROPERTY COVERAGE FORM**

**CAUSES OF LOSS - SPECIAL FORM**

This coverage is subject to the provisions, including exclusions and limitations, applicable to the Building and Personal Property Coverage Form and the Causes of Loss - Special Form, except as provided below.

The following is added to Paragraph A.4. Additional Coverages of the Building and Personal Property Coverage Form.

**A. COVERAGE**

We will pay for direct physical loss or damage to the contents of freezer or refrigeration units at the premises described in the Declarations caused by:

1. Change in temperature or humidity resulting from mechanical breakdown or failure or refrigerating, cooling or humidity control apparatus or equipment;
2. Contamination by a refrigerant; and
3. Change in temperature or humidity resulting from complete or partial interruption of electrical power, either on or off the described premises, due to conditions beyond your control.

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However, coverage does not apply if you have failed to exercise reasonable care in inspecting and maintaining the refrigeration equipment. If interruption of electrical service or mechanical breakdown is known, you must use all reasonable means to protect the covered property from further damage.

#### B. LIMITS OF INSURANCE

The most we will pay for any one occurrence under Spoilage or Contamination by a Refrigerant is \$50,000.

This is an additional amount of insurance.

#### V. OUTDOOR PROPERTY COVERAGE

This coverage modifies insurance provided under the following:

##### BUILDING AND PERSONAL PROPERTY COVERAGE FORM

##### CAUSES OF LOSS - SPECIAL FORM

This coverage is subject to the provisions, including exclusions and limitations, applicable to the Building and Personal Property Coverage Form and the Causes of Loss - Special Form, except as provided below.

Paragraph A.5. Coverage Extensions of the Building And Personal Property Coverage Form is modified as follows:

#### e. Outdoor Property

The most we will pay under this extension is changed from \$1,000, but not more than \$250 for any one tree, shrub or plant to \$25,000, but not more than \$1,500 for any one tree, shrub or plant.

#### VI. MEDICAL PAYMENTS - FOOD OPERATIONS

This coverage modifies insurance provided under the following:

##### COMMERCIAL GENERAL LIABILITY COVERAGE FORM

This coverage is subject to the provisions, including exclusions and limitations, applicable to the Commercial General Liability Coverage Form, except as provided below.

The following is added to Paragraph 1.a. under COVERAGEC MEDICAL PAYMENTS:

We will pay medical expenses as described below for "bodily injury" caused by an accident:

- (4) Arising out of "your product" as included in the "products-completed operations hazard" for operations involving the serving and consumption of food products.

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POLICY NUMBER 33.309917-60E



DIANOIAS EATERY LLC ET AL

## Exclusion Of Certified Acts Of Terrorism Involving Nuclear, Biological, Chemical Or Radiological Terrorism; Cap On Covered Certified Acts Losses

IL 7045 (01-15)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following:

COMMERCIAL INLAND MARINE COVERAGE FORM  
COMMERCIAL PROPERTY COVERAGE FORM  
BUSINESSOWNERS COVERAGE FORM  
COMMERCIAL GENERAL LIABILITY COVERAGE FORM  
LIQUOR LIABILITY COVERAGE FORM  
UNDERGROUND STORAGE TANK POLICY  
COMMERCIAL UMBRELLA POLICY

**A. The following definition is added with respect to the provisions of this endorsement:**

"Certified act of terrorism" means an act that is certified by the Secretary of the Treasury, in accordance with the provisions of the federal Terrorism Risk Insurance Act, to be an act of terrorism pursuant to such Act. The criteria contained in the Terrorism Risk Insurance Act for a "certified act of terrorism" include the following:

1. The act resulted in insured losses in excess of \$5 million in the aggregate, attributable to all types of insurance subject to the Terrorism Risk Insurance Act; and
2. The act is a violent act or an act that is dangerous to human life, property or infrastructure and is committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

**B. Section I - Property is amended as follows:**

**1. The following exclusion is added:**

**a. Limited Exclusion Of Certified Acts Of Terrorism**

We will not pay for loss or damage caused directly or indirectly by a "certified act of terrorism". Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss. But this exclusion applies only when one or more of the following are attributed to such act:

- (1) The terrorism is carried out by means of the dispersal or application of radioactive material, or through the use of a nuclear weapon or device that involves or produces a nuclear reaction, nuclear radiation or radioactive contamination; or
- (2) Radioactive material is released, and it appears that one purpose of the terrorism was to release such material; or
- (3) The terrorism is carried out by means of the dispersal or application of pathogenic or poisonous biological or chemical material; or
- (4) Pathogenic or poisonous biological or chemical material is released, and it appears that one purpose of the terrorism was to release such material.

When this terrorism exclusion applies in accordance with the terms of Paragraph B.1.a.(1) or B.1.a.(2), the terrorism exclusion applies without regard to the Nuclear Hazard Exclusion in this Coverage Form.

**2. Exception Covering Certain Fire Losses**

The following exception to the Exclusion in Paragraph B.1. applies only to property located in Maine, Massachusetts, Missouri, New Hampshire, Pennsylvania, Rhode Island, Virginia, Wisconsin and West Virginia.

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If a "certified act of terrorism" excluded under Paragraph B.1. results in fire, we will pay for the loss or damage caused by that fire, subject to all applicable policy provisions including the Limit of Insurance on the affected property. Such coverage for fire applies only to direct loss or damage by fire to Covered Property. Therefore, for example, the coverage does not apply to insurance provided under business income and/or extra expense coverage forms or endorsements that apply to those coverages.

### 3. Application Of Exclusions

The terms and limitations of any terrorism exclusion, or the non-applicability or omission of a terrorism exclusion, do not serve to create coverage for any loss which would otherwise be excluded under this Coverage Form, such as losses excluded by the War And Military Action Exclusion.

### C. Section II - Liability is amended as follows:

#### 1. The following exclusion is added:

This insurance does not apply to:

#### **TERRORISM**

"Any injury or damage" arising, directly or indirectly, out of a "certified act of terrorism." However, this exclusion applies only when one or more of the following are attributed to such act:

- a. The terrorism involves the use, release or escape of nuclear materials, or directly or indirectly results in nuclear reaction or radiation or radioactive contamination; or
- b. The terrorism is carried out by means of the dispersal or application of pathogenic or poisonous biological or chemical materials; or
- c. Pathogenic or poisonous biological or chemical materials are released, and it appears that one purpose of the terrorism was to release such materials.

#### 2. The following definition is added:

- a. For the purpose of this endorsement, "any injury or damage" means any injury or damage covered under this coverage form or any applicable endorsement, and includes but is not limited to "bodily injury," "property damage" or "personal and advertising injury" as may be defined in this coverage form or any applicable endorsement.

#### 3. The terms and limitations of any terrorism exclusion, or the inapplicability or omission of a terrorism exclusion, do not serve to create coverage for injury or damage that is otherwise excluded under this Coverage Part.

### D. Section I - Property and Section II - Liability are amended as follows:

#### **CAP ON CERTIFIED TERRORISM LOSSES**

The following limitation applies to coverage for any one or more "certified acts of terrorism" that are not excluded by the terms of the exclusion in Paragraphs B.1. and C.1. and to any loss or damage that is covered and to which the exception in Paragraph B.2. applies.

If aggregate insured losses attributable to terrorist acts certified under the Terrorism Risk Insurance Act exceed \$100 billion in a calendar year and we have met our insurer deductible under the Terrorism Risk Insurance Act, we shall not be liable for the payment of any portion of the amount of such losses that exceeds \$100 billion, and in such case insured losses up to that amount are subject to pro rata allocation in accordance with procedures established by the Secretary of the Treasury.

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**Declarations**

POLICY NUMBER 33.309917-60E

EFFECTIVE DATE 06/20/2019



DIANOIAS EATERY LLC ET AL

**Commercial Property Coverage Form**  
**Declarations Page**
**CP 7000 (04-96)**

DIANOIAS EATERY LLC ET AL

**Coverage Provided**

Insurance at the described premises applies only for coverage for which a Limit of Insurance is shown.

\* DENOTES COVERAGE/VALUATION METHOD LEGEND

- \* "PPO" means - Personal Property of Others
- \* "YBPP W/Stock" means - Your Business Personal Prop. (Incl. Stock)
- \* "YBPP W/O Stock" means - Your Business Personal Prop. (Excl. Stock)

- \* "ACV" means - Actual Cash Value
- \* "ACV-AV" means - Actual Cash Value w/Agreed Value
- \* "FBV" means - Functional Building Valuation
- \* "FPPV" means - Functional Personal Property Valuation
- \* "FV" means - Functional Valuation
- \* "MR" means - Monthly Reporting
- \* "MV" means - Market Value

- \* "RC" means - Replacement Cost
- \* "RC-AV" means - Replacement Cost w/Agreed Value
- \* "RCX" means - Replacement Cost Extended to PPO
- \* "RCX-AV" means - Replacement Cost Extended to PPO w/Agreed Value
- \* "RF" means - Reporting Form
- \* "SP" means - Selling Price

DEDUCTIBLE: \$ 500

Refer to the Schedule Of Premises (IL 7005) for a description of the premises listed.

PREMISES NUMBER	BUILDING NUMBER	CONSTRUCTION	OCCUPANCY
0001	0001	JOISTED MASONRY	CASUAL FINE DINING

**Property Coverage**

PREMISES NUMBER	BUILDING NUMBER	COVERAGE*	LIMIT OF INSURANCE	COVERED CAUSES OF LOSS	EARTH- QUAKE APPLIES	COIN- SURANCE* PERCENT	VALUATION METHOD*
0001	0001	YBPP W/STOCK	\$ 325,000	SPECIAL	NO	90	RC

CP 7000 (04-96)

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POLICY NUMBER

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DIANOIAS EATERY LLC ET AL

### ***Forms and Endorsements***

Forms applicable to this Coverage Form are listed in the Schedule of Forms and Endorsements (IL 7004).

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POLICY NUMBER 33.309917-60E

EFFECTIVE DATE 06/20/2019



DIANOIAS EATERY LLC ET AL

**Additional Insured Provisions****CP 7004 (01-87)****THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

This endorsement modifies insurance provided under the following:

BUILDING AND PERSONAL PROPERTY COVERAGE FORM  
 BUILDERS' RISK COVERAGE FORM  
 CONDOMINIUM ASSOCIATION COVERAGE FORM  
 CONDOMINIUM COMMERCIAL UNIT-OWNERS COVERAGE FORM

Whenever we refer to the Named Insured, we include any Additional Insured whose name and specific interest are shown in the Schedule.

The following is added to the LOSS PAYMENT Loss Condition:

If we cancel this policy, we will give written notice of cancellation to the Additional Insured at least:

1. 10 days before the effective date of cancellation if we cancel for nonpayment of premium; or
2. 30 days before the effective date of cancellation if we cancel for any other reason.

MOTORISTS MUTUAL INSURANCE COMPANY

**SCHEDULE**

PREMISES NUMBER	BUILDING NUMBER	ADDITIONAL INSURED	INTEREST TYPE
0001	0001	SALVATORE M RICHETTI 2549 PENN AVE PITTSBURGH PA 15222	BUILDING OWNER



POLICY NUMBER 33.309917-60E

EFFECTIVE DATE 06/20/2019



DIANOIAS EATERY LLC ET AL

## Select Property Plus Endorsement

CP 7029 (12-14)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following:

BUILDING AND PERSONAL PROPERTY COVERAGE FORM  
CAUSES OF LOSS - SPECIAL FORM

The coverage provided by this endorsement is subject to the provisions, including exclusions and limitations, applicable to the Building and Personal Property Coverage Form and the Causes of Loss - Special Form, except as provided below. The deductible shown on the Declarations Page applies unless otherwise shown in this endorsement.

I. The BUSINESS AND PERSONAL PROPERTY COVERAGE FORM is changed as follows:

### A. COVERAGE

#### 1. Covered Property

a. Building. Paragraph A.1.a.(5)(b) is deleted and replaced with the following:

(5) If not covered by other insurance:

(b) Materials, equipment, supplies and temporary structures, on or within 1,000 feet of the described premises, used for making additions, alterations or repairs to the building or structure.

b. Your Business Personal Property. Paragraph A.1.b. is deleted and replaced with the following:

b. Your Business Personal Property located in or on the building described in the Declarations or in the open (or in a vehicle) within 1,000 feet of the described premises, consisting of the following unless otherwise specified in the Declarations or on the Your Business Personal Property - Separations of Coverage form:

#### 2. Sign Coverage

a. Building. Paragraph A.1.a.(5)(c) is added.

(c) Signs.

b. Your Business Personal Property. Paragraph A.1.b.(8) is added.

(8) Your signs and signs for which you have a contractual responsibility to insure unless otherwise provided for under Building coverage.

c. "Signs (other than signs attached to buildings)" is deleted from Paragraph A.2. Property Not Covered and Coverage Extension 5.e. Outdoor Property.

d. The second paragraph of the LIMITS OF INSURANCE section does not apply.

### B. ADDITIONAL COVERAGES

#### 1. Debris Removal.

Paragraph A.4.a.(3) and (4) are deleted and replaced by the following:

(3) Subject to the exceptions in Paragraph (4), the following provisions apply:

(a) The most we will pay for the total of direct physical loss or damage plus debris removal expense is the Limit of Insurance applicable to the Covered Property that has sustained loss or damage.

(b) Subject to (a) above, the amount we will pay for debris removal expense is limited to 30% of the sum of the deductible plus the amount that we pay for direct physical loss or damage to the Covered Property that has sustained loss or damage.

(4) We will pay up to an additional \$15,000 for debris removal expense, for each location, in any one occurrence of physical loss or damage to Covered Property, if one or both of the following circumstances apply:

(a) The total of the actual debris removal expense plus the amount we pay for direct physical loss or damage exceeds the Limit of Insurance on the Covered Property that has sustained loss or damage.

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(b) The actual debris removal expense exceeds 30% of the sum of the deductible plus the amount that we pay for direct physical loss or damage to the Covered Property that has sustained loss or damage.

Therefore, if (4)(a) and/or (4)(b) apply, our total payment for direct physical loss or damage and debris removal expense may reach but will never exceed the Limit of Insurance on the Covered Property that has sustained loss or damage, plus \$15,000.

2. Preservation of Property. The coverage provided in paragraph A.4.b.(2) is increased from 30 to 60 days.
3. Fire Department Service Charge. The amount we will pay for the Fire Department Service Charge (A.4.c.) is increased from \$1,000 to \$3,000.
4. Pollutant Clean Up and Removal. The amount we will pay for Pollutant Clean Up and Removal (A.4.d) is increased from \$10,000 to \$20,000.

The following items are added to Paragraph A.4. Additional Coverages:

5. Security Guard Coverage. We will pay up to \$5,000 for the expenses you incur to hire a licensed private security guard or off-duty law enforcement officer in order to protect the public or your property from hazardous conditions which result from a Covered Cause of Loss.

This is an additional amount of insurance.

No deductible applies to this Additional Coverage.

6. Lock Replacement. We will pay up to \$1,000 for the expenses you incur to repair or replace the building door locks or tumblers at your described premises due to theft of your door keys.

No deductible applies to this Additional Coverage.

7. Fire Extinguisher Recharge. We will pay the expenses you incur to recharge portable fire extinguishers that have been used to fight a fire at the described premises.

This is an additional amount of insurance.

No deductible applies to this Additional Coverage.

#### 8. Money and Securities

- a. We will pay for loss of "money" and "securities" used in your business while at a bank or savings institution, within your living quarters or the living quarters of your partners or any employee having use and custody of the property, at the described premises, or in transit between any of these places, resulting directly from:

(1) Theft, meaning any act of stealing;

(2) Disappearance; or

(3) Destruction.

- b. In addition to the Limitations and Exclusions of the Building and Personal Property Coverage Form and the Causes of Loss - Special Form, we will not pay for loss:

(1) Resulting from accounting or arithmetical errors or omissions;

(2) Due to the giving or surrendering of property in any exchange or purchase; or

(3) Of property contained in any "money"-operated device unless the amount of "money" deposited in it is recorded by a continuous recording instrument in the device.

- c. The most we will pay for loss in any one occurrence is:

(1) \$10,000 for "money" and "securities" while:

(a) In or on the described premises; or

(b) Within a bank or savings institution; and

(2) \$10,000 for "money" and "securities" while anywhere else.

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## d. All loss:

- (1) Caused by one or more persons; or
  - (2) Involving a single act or series of related acts;
- is considered one occurrence.

## e. You must keep records of all "money" and "securities" so we can verify the amount of loss or damage.

## f. With respect to the coverage provided by this endorsement:

## (1) "Money" means:

- (a) Currency, coins and bank notes in current use and having a face value; and
- (b) Traveler's checks, register checks and money orders held for sale to the public.

## (2) "Securities" means negotiable and non-negotiable instruments or contracts representing either "money" or other property and includes:

- (a) Tokens, tickets, revenue and other stamps (whether represented by actual stamps or unused value in a meter) in current use; and
- (b) Evidences of debt issued in connection with credit or charge cards, which cards are not issued by you; but does not include "money."

This is an additional amount of insurance.

No deductible applies to this coverage.

## 9. Business Income and Extra Expense

## Business Income

We will pay for the loss of Business Income you sustain due to the necessary "suspension" of your "operations" during the "period of restoration" caused by or resulting from any Covered Cause of Loss.

The "suspension" must be caused by direct physical loss of or damage to:

Property at the described premises, including personal property in the open (or within a vehicle) within 1,000 feet of the described premises; or

Direct physical damage to the following property on or not on the described premises:

## a. Water Supply Services, meaning the following types of property supplying water to the described premises:

- (1) Pumping stations; and
- (2) Water mains.

## b. Communication Supply Services, meaning property supplying communication services, including telephone, radio, microwave or television services, to the described premises, such as:

- (1) Communication transmission lines, including optic fiber transmission lines;
- (2) Coaxial cables; and
- (3) Microwave radio relays except satellites.

## c. Power Supply Services, meaning the following types of property supplying electricity, steam or gas to the described premises:

- (1) Utility generating plants;
- (2) Switching stations;
- (3) Substations;
- (4) Transformers; and
- (5) Transmission lines.

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Business Income means:

- a. The Net Income (Net Profit or Loss before income taxes) that would have been earned or incurred; and for manufacturing risks net income includes the net sales value of production, and
- b. The continuing normal operating expenses incurred, including payroll.
- c. Rental Value

Rental Value means business income that consists of:

- (1) Net Income (Net Profit or Loss before income taxes) that would have been earned or incurred as rental income from tenant occupancy of the premises described in the Declarations as furnished and equipped by you, including fair rental value of any portion of the described premises which is occupied by you; and
- (2) Continuing normal operating expenses incurred in connection with that premises, including:
  - (a) Payroll; and
  - (b) The amount of charges which are the legal obligation of the tenant(s) but would otherwise be your obligations.

We will only pay for loss of Business Income that occurs within 12 consecutive months after the date of direct physical loss or damage.

Extra Expense

We will pay necessary Extra Expense you incur during the "period of restoration" that you would not have incurred if there had been no direct physical loss or damage to property at the described premises, including personal property in the open (or in a vehicle) within 1,000 feet of the described premises, caused by or resulting from a Covered Cause of Loss.

Extra Expense means the expense incurred:

- a. To avoid or minimize the "suspension" of business and to continue "operations":
  - (1) At the described premises; or
  - (2) At replacement premises or at temporary locations, including:
    - (a) Relocation expenses; and
    - (b) Costs to equip and operate the replacement or temporary locations.
- b. To minimize the "suspension" of business if you cannot continue "operations."
- c. To:
  - (1) Repair or replace any property; or
  - (2) Research, replace or restore the lost information on damaged valuable papers and records;
 to the extent it reduces the amount of loss that otherwise would have been payable under this Additional Coverage 9. Business Income and Extra Expense.

We will also pay for Extra Expense at the described premises caused by the interruption of service to the described premises. The interruption must result from direct physical loss or damage by a Covered Cause of Loss to the following property on or not on the described premises:

- a. Water Supply Services, meaning the following types of property supplying water to the described premises:
  - (1) Pumping stations; and
  - (2) Water mains.
- b. Communication Supply Services, meaning property supplying communications services, including telephone, radio, microwave or television services, to the described premises, such as:
  - (1) Communications transmission lines, including optic fiber transmission lines;
  - (2) Coaxial cables; and
  - (3) Microwave radio relays except satellites.

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c. Power Supply Services, meaning the following types of property supplying electricity, steam or gas to the described premises:

- (1) Utility generating plants;
- (2) Switching stations;
- (3) Substations;
- (4) Transformers; and
- (5) Transmission lines.

We will only pay for Extra Expense that occurs within 12 consecutive months after the date of direct physical loss or damage.

With respect to the coverage provided by this endorsement:

- a. "Operations" means your business activities occurring at the described premises.
- b. "Period of Restoration" means the period of time that:
  - (1) Begins with the date of direct physical loss or damage caused by or resulting from any Covered Cause of Loss at the described premises; and
  - (2) Ends on the date when the property at the described premises should be repaired, rebuilt or replaced with reasonable speed and similar quality.

"Period of restoration" does not include any increased period required due to the enforcement of any ordinance or law that:

- (1) Regulates the construction, use or repair, or requires the tearing down of any property; or
- (2) Requires any insured or others to test for, monitor, clean-up, remove, contain, treat, detoxify or neutralize, or in any way respond to or assess the effects of "pollutants."

The expiration date of the policy will not cut short the "period of restoration."

- c. "Suspension" means;
  - (1) The slowdown or cessation of your business activities; or
  - (2) That a part of all of the described premises is rendered untenable. If coverage for Business Income including "Rental Value" or "Rental Value" applies.

The most we will pay under this Additional Coverage is \$100,000 for any one occurrence.

This is an additional amount of insurance.

No deductible applies to this coverage.

#### 10. Computer Coverage

We will pay for:

- a. Loss or damage to "electronic data processing equipment" and "electronic media and records;" and
- b. The cost of reproducing lost or damaged "electronic media and records,"

which you own, lease or rent from others, for which you are legally responsible, when loss or damage is caused by:

- a. Direct physical loss caused by any Covered Cause of Loss;
- b. Loss caused by interruption of service to the premises. The interruption must result from direct physical loss or damage by a Covered Cause of Loss to any generating plant, powerhouse, substation, transformer or other equipment which furnishes electricity to your premises;
- c. Mechanical breakdown;

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d. Artificially generated current creating a short circuit, blow-out or other electrical disturbance within an article insured under this coverage.

Subject to the limit of coverage provided by this Select Property Endorsement, loss or damage to "electronic data processing equipment" and "electronic media and records" caused by mechanical breakdown and artificially generated current shall be a Covered Cause of Loss under Business Income Coverage.

This coverage does not apply to loss or damage which is covered by any maintenance or service agreement that applies to your "electronic data processing equipment" or "electronic media and records."

The most we will pay under this Additional Coverage is \$50,000 for any one occurrence.

"Electronic Data Processing Equipment" means:

- a. Programmable electronic equipment that is used to store, retrieve and process data; and
  - b. Associated peripheral equipment that provides communication including input and output functions such as printing, or auxiliary functions such as data transmission;
- except as described in "electronic media and records" below.

"Electronic Media and Records" means:

- a. Electronic data processing, recording or storage media such as films, tapes, discs, drums or cells;
- b. Data stored on such media; and
- c. Programming records used for electronic data processing or electronically controlled equipment.

This is an additional amount of insurance.

#### 11. Tenant's Glass Coverage

- (a) If you are a tenant and no limit of insurance is shown in the Declarations, we will pay for direct physical loss of or damage to glass, including lettering or ornamentation, that is part of the exterior of a building or structure at the described premises. We will also pay for direct physical loss of or damage to items of glass that are permanently affixed to the interior walls, floors or ceilings of a building or structure at the described premises. The glass must be owned by you, or owned by others but in your care, custody or control for which you have a contractual responsibility to insure. We will also pay for necessary:

- (1) Expenses incurred to put up temporary plates or board up openings;
- (2) Repair or replacement of encasing frames; and
- (3) Expenses incurred to remove or replace obstructions.

The most we will pay under this Additional Coverage is the Business Personal Property Limit of Insurance shown in the Declarations.

#### 12. Utility Services - Direct Damage

- 1. We will pay for loss of or damage to Covered Property at the premises described in the Declarations, caused by the interruption of service to the described premises. The interruption must result from direct physical loss or damage by a Covered Cause of Loss to the property described in Paragraph 2. if such property is located outside a covered building described in the Declarations.

##### 2. Utility Services

- a. Water Supply Services, meaning the following types of property supplying water to the described premises:
  - (1) Pumping stations; and
  - (2) Water mains.

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- b. Communication Supply Services, meaning property supplying communication services, including telephone, radio, microwave or television services, to the described premises, such as:
  - (1) Communication transmission lines, including optic fiber transmission lines;
  - (2) Coaxial cables; and
  - (3) Microwave radio relays except satellites; and
  - (4) Overhead transmission lines.
- c. Power Supply Services, meaning the following types of property supplying electricity, steam or gas to the described premises:
  - (1) Utility generating plants;
  - (2) Switching stations;
  - (3) Substations;
  - (4) Transformers;
  - (5) Transmission lines; and
  - (6) Overhead Transmission Lines.

The most we will pay under this Additional Coverage is \$5,000 in any one occurrence.

This is an additional amount of insurance.

### 13. Employee Dishonesty

- a. We will pay for direct loss of or damage to Business Personal Property and "money" and "securities" resulting from dishonest acts committed by any of your employees acting alone or in collusion with other persons (except you or your partner) with the manifest intent to:
  - (1) Cause you to sustain loss or damage; and also
  - (2) Obtain financial benefit (other than salaries, commissions, fees, bonuses, promotions, awards, profit sharing, pensions or other employee benefits earned in the normal course of employment) for:
    - (a) Any employee; or
    - (b) Any other person or organization.
- b. We will not pay for loss or damage:
  - (1) Resulting from any dishonest or criminal act that you or any of your partners commit whether acting alone or in collusion with other persons.
  - (2) The only proof of which as to its existence or amount is:
    - (a) An inventory computation; or
    - (b) A profit and loss computation.
- c. The most we will pay for loss or damage in any one occurrence is \$100,000.
- d. All loss or damage:
  - (1) Caused by one or more persons; or
  - (2) Involving a single act or series of related acts;
 is considered one occurrence.
- e. We will pay only for loss or damage you sustain through acts committed or events occurring during the Policy Period. Regardless of the number of years this policy remains in force or the number of premiums paid, no Limit of Insurance cumulates from year to year or period to period.



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- f. This Additional Coverage does not apply to any employee immediately upon discovery by:
- (1) You; or
  - (2) Any of your partners, officers or directors not in collusion with the employee; of any dishonest act committed by that employee before or after being hired by you.
- g. We will pay only for covered loss or damage discovered no later than one year from the end of the Policy Period.
- h. If you (or any predecessor in interest) sustained loss or damage during the period of any prior insurance that you could have recovered under that insurance except that the time within which to discover loss or damage had expired, we will pay for it under this Additional Coverage provided:
- (1) This Additional Coverage became effective at the time of cancellation or termination of the prior insurance; and
  - (2) The loss or damage would have been covered by this Additional Coverage had it been in effect when the acts or events causing the loss or damage were committed or occurred.
- i. The insurance under Paragraph (h) above is part of, not in addition to, the Limit of Insurance applying to this Additional Coverage and is limited to the lesser of the amount recoverable under:
- (1) This Additional Coverage as of its effective date; or
  - (2) The prior insurance had it remained in effect.
- j. "Money" means:
- (1) Currency, coins and bank notes in current use and having a face value; and
  - (2) Travelers checks, register checks and money orders held for sale to the public.
- k. "Securities" means negotiable and non-negotiable instruments or contracts representing either "money" or other property and includes:
- a. Tokens, tickets, revenue and other stamps (whether represented by actual stamps or unused value in a meter) in current use; and
  - b. Evidences of debt issued in connection with credit or charge cards, which cards are not issued by you; but does not include "money."

This is an additional amount of insurance.

14. Forgery And Alteration
- a. We will pay for loss resulting directly from forgery or alteration of, any check, draft, promissory note, bill of exchange or similar written promise of payment in "money," that you or your agent has issued, or that was issued by someone who impersonates you or your agent.
  - b. If you are sued for refusing to pay the check, draft, promissory note, bill or exchange or similar written promise of payment in "money," on the basis that it has been forged or altered, and you have our written consent to defend against the suit, we will pay for any reasonable legal expenses that you incur in that defense.
  - c. The most we will pay for any loss, including legal expenses, under this Additional Coverage is \$5,000. This is an additional amount of insurance.
  - d. "Money" means:
    - (1) Currency, coins and bank notes in current use and having a face value; and
    - (2) Travelers checks, register checks and money orders held for sale to the public.



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**15. Fine Arts Coverage**

We will pay for direct physical loss or damage to "fine arts" located at the described premises from any Covered Cause of Loss.

"Fine Arts" means any of the following type of property that is your property or property of others in your care, custody or control:

1. Paintings, etchings, drawings;
2. Tapestries, rugs, weavings;
3. Art glass, porcelain, pottery;
4. Statuary, marble, bronzes;
5. Antique furniture;
6. Rare books, manuscripts; and
7. Other works of art or rarity, historical value or artistic merit.

We will not pay for loss or damage caused directly or indirectly by any repairing, restoration or retouching.

You must ensure that the "fine arts," when being moved or stored, are handled by competent packers.

The most we will pay for any one occurrence under Fine Arts Coverage is \$10,000.

This is an additional amount of insurance.

We will determine the value of "fine arts" at replacement cost (without deduction for depreciation).

**16. Spoilage or Contamination by a Refrigerant**

We will pay for direct physical loss or damage to the contents of freezer or refrigeration units at the premises described in the Declarations caused by:

1. Change in temperature or humidity resulting from mechanical breakdown or failure of refrigerating, cooling or humidity control apparatus or equipment;
2. Contamination by a refrigerant; and
3. Change in temperature or humidity resulting from complete or partial interruption of electrical power, either on or off the described premises, due to conditions beyond your control.

However, coverage does not apply if you have failed to exercise reasonable care in inspecting and maintaining the refrigeration equipment. If interruption of electrical service or mechanical or electrical breakdown is known, you must use all reasonable means to protect the covered property from further damage.

The most we will pay for any one occurrence under Spoilage or Contamination by a Refrigerant is \$10,000.

This is an additional amount of insurance.

**17. Water Back-up of Sewers and Drains**

- a. We will pay for loss or damage caused by or resulting from water which backs up from a sewer, drain or sump at the premises described in the Declarations.
- b. This Additional Coverage is not subject to Exclusion B.1., subsection g.(3) in the Causes of Loss-Special Form, but only to the extent that such Exclusion would conflict with the provisions of this Additional Coverage.
- c. The most we will pay for all loss or damage in any one occurrence under the policy is \$50,000.

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**C. COVERAGE EXTENSIONS****1. Paragraph A.5. Coverage Extensions is modified as follows:****a. Newly Acquired or Constructed Property****(1) Buildings**

If this policy covers Building, you may extend that insurance to apply to:

- (a) Your new building while being built on the described premises; and
- (b) Buildings you acquire at locations, other than the described premises, intended for:
  - (i) Similar use as the building described in the Declarations; or
  - (ii) Use as a warehouse.

The most we will pay for loss or damage under this Extension is \$500,000 at each building.

**(2) Your Business Personal Property**

(a) If this policy covers Your Business Personal Property, you may extend that insurance to apply to:

- (i) Business personal property, including such property that you newly acquire, at any location you acquire other than at fairs, trade shows or exhibitions;
- (ii) Business personal property, including such property that you newly acquire, located at your newly constructed or acquired buildings at the location described in the Declarations; or
- (iii) Business personal property that you newly acquire, located at the described premises.

The most we will pay for loss or damage under this Extension is \$500,000 at each building.

**(b) This Extension does not apply to:**

- (i) Personal property of others that is temporarily in your possession in the course of installing or performing work on such property; or
- (ii) Personal property of others that is temporarily in your possession in the course of your manufacturing or wholesaling activities.

**(3) Period of Coverage**

With respect to insurance on or at each newly acquired or constructed property, coverage will end when any of the following first occurs:

- (a) This policy expires;
- (b) 90 days expire after you acquire the property or begin construction of that part of the building that would qualify as covered property; or
- (c) You report values to us.

We will charge you additional premium for values reported from the date you acquire the property or begin construction of that part of the building that would qualify as covered property.

- b. Personal Effects and Property of Others.** The most we will pay under this Extension is changed from \$2,500 to \$10,000 at each described premises.
- c. Valuable Papers and Records (other than Electronic Data).** The most we will pay under this extension is changed from \$2,500 to \$50,000 at each premises.
- d. Property Off-Premises.** Paragraph A.5.d. is deleted and replaced with the following:

You may extend the insurance provided by this Coverage Form to apply to your Covered Property, including "stock," while it is away from the described premise, if it is as:

- (1) Temporarily at a location you do not own, lease or operate;
- (2) In storage at a location you lease, provided the lease was executed after the beginning of the current policy term; or

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The most we will pay under this extension is \$25,000.

- e. Outdoor Property. The most we will pay under this extension is changed from \$1,000 but not more than \$250 for any one tree, shrub or plant to \$25,000 but not more than \$500 for any one tree, shrub or plant.

2. The following items are added to Paragraph A.5 Coverage Extensions:

g. Accounts Receivable.

You may extend the insurance that applies to Your Business Personal Property to apply to:

- (1) All amounts due from your customers that you are unable to collect;
  - (2) Interest charges on any loan required to offset amounts you are unable to collect pending our payment of these amounts;
  - (3) Collection expenses in excess of your normal collection expenses that are made necessary by loss or damage and;
  - (4) Other reasonable expenses you incur to re-establish your records of accounts receivable;
- that result from Covered Causes of Loss to your records of accounts receivable.

Determination of Receivables

- (1) If you cannot accurately establish the amount of accounts receivable outstanding as of the time of loss, the following method will be used:
  - (a) Determine the total of the average monthly amounts of accounts receivable for the 12 months immediately preceding the month in which the loss occurs; and
  - (b) Adjust that total for any normal fluctuations in the amount of accounts receivable for the month in which the loss occurred or for any demonstrated variance from the average for that month.
- (2) The following will be deducted from the total amount of accounts receivable, however that amount is established:
  - (a) The amount of the accounts for which there is no loss;
  - (b) The amount of the accounts that you are able to re-establish or collect;
  - (c) An amount to allow for probable bad debts that you are normally unable to collect; and
  - (d) All unearned interest and service charges.

The most we will pay under this Extension is \$50,000.

- h. Reward Coverage. You may extend this insurance to provide a reward for information that leads to a criminal conviction or a plea of guilty or no contest in connection with loss or damage to Covered Property by a Covered Cause of Loss. The most we will pay under this extension is \$5,000 regardless of the number of persons involved in providing the information.

No deductible applies to this Coverage Extension.

i. Ordinance or Law

You may extend the insurance that applies to Buildings to apply to the increased costs you incur due to the enforcement of any ordinance or law which requires or regulates:

- (1) The construction, demolition, remodeling, renovation or repair of that part of covered Buildings damaged by a Covered Cause of Loss;

When covered Building property is damaged or destroyed by a Covered Cause of Loss and h.(1) applies to that property, coverage for the increased cost of construction also applies to repair or reconstruction of the following:

- (a) The cost of excavations, grading, backfilling and filling;
- (b) Foundation of the building;
- (c) Pilings; and

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(d) Underground pipes, flues and drains.

Items (a) through (d) above are deleted from Property Not Covered, but only with respect to the coverage described in the provision i.(1).

- (2) The demolition and reconstruction of the undamaged part of covered Building property, when that building must be totally demolished because of damage by a Covered Cause of Loss to another part of that covered Building property; or
- (3) The remodeling, removal or replacement of the portion of the undamaged part of covered Building property necessary to complete the remodeling, repair or replacement of that part of a covered Building damaged by a Covered Cause of Loss.

You may use all or part of this ordinance or law coverage to pay for the increased costs you incur to remove debris resulting from the construction, demolition, remodeling, renovation, repair or replacement of property as stated above.

We will not pay for:

- (1) The loss in value to any covered Building due to the requirements of any ordinance or law; or
- (2) Enforcement of any ordinance or law which requires the demolition, repair, replacement, reconstruction, remodeling or remediation of property due to contamination by "pollutants" or due to the presence, growth, proliferation, spread or any activity of "fungus", wet or dry rot or bacteria; or
- (3) The costs associated with the enforcement of any ordinance or law which requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants", "fungus", wet or dry rot or bacteria.
- (4) Loss due to any ordinance or law that:
  - (a) You were required to comply with before the loss, even if the building was undamaged; and
  - (b) You failed to comply with.

The most we will pay under this Extension is \$100,000 at each building. This is an additional amount of insurance.

The following definition is added:

"Fungus" means any type or form of fungus, including mold or mildew, and any mycotoxins, spores, scents or by-products produced or released by fungi.

j. Inventory And Appraisal

You may extend this insurance to apply to the following expenses you incur to comply with the Appraisal LOSS CONDITION.

- (1) The cost of paying your chosen appraiser; and
- (2) Your share of the other expenses of the appraisal and umpire.

The most we will pay under this Extension for any loss is \$2,000.

No deductible applies to this Coverage Extension.

II. The CAUSES OF LOSS - SPECIAL FORM is changed as follows:

A. GLASS

- 1. Paragraph A., Covered Causes of Loss and Section B., Exclusions do not apply to the Tenant's Glass Additional Coverage except for:

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- a. Paragraph B.1.b., Earth Movement;
  - b. Paragraph B.1.c., Government Action;
  - c. Paragraph B.1.d., Nuclear Hazard;
  - d. Paragraph B.1.f., War and Military Action; and
  - e. Paragraph B.1.g., Water.
2. We will not pay for loss or damage caused by or resulting from:
- a. Wear and tear;
  - b. Hidden or latent defect;
  - c. Corrosion; or
  - d. Rust.

**B. EXCLUSIONS**

- 1. Exclusion 1.a. Ordinance or Law does not apply to the amount of coverage that may be provided under Coverage Extension i. of this endorsement.
  - 2. False Pretense
- Exclusion 2.i. is amended to read: does NOT apply to any single item whose value exceeds \$500.

**C. LIMITATIONS**

- 1. Increased Limits for Specified Property.
  - a. The special limit applicable to furs, fur garments and garments trimmed with fur in Paragraph C.3.a. is increased from \$2,500 to \$10,000.
  - b. The special limit applicable to jewelry, watches, watch movements, jewels, pearls, precious and semi-precious stones, bullion, gold, silver, platinum and other precious alloys or metals in Paragraph C.3.b. is increased from \$2,500 to \$10,000.
  - c. The special limit for patterns, dies, molds and forms in Paragraph C.4.c. is increased from \$2,500 to \$10,000.

**F. ADDITIONAL COVERAGE EXTENSIONS**

Paragraphs F.1.a. and F.1.c. are deleted and replaced with the following:

- a. You may extend the insurance provided by this Coverage Form to apply to your personal property in transit more than 1,000 feet from the described premises. Property must be in or on a motor vehicle you own, lease, operate or operated by your salespersons while between points in the coverage territory.
- c. The most we will pay for loss or damage under this Extension is \$100,000.

**III. SPECIAL CONDITIONS**

If you have other insurance provided by another MOTORISTS coverage extension endorsement covering the same loss or damage we will not pay more than the highest applicable limit of insurance.

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MOTORISTS MUTUAL INSURANCE COMPANY

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## Building And Personal Property Coverage Form

CP 0010 (04-02)

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy, the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we," "us" and "our" refer to the Company providing this insurance.

Other words and phrases that appear in quotation marks have special meaning. Refer to SECTION H - DEFINITIONS.

### A. COVERAGE

We will pay for direct physical loss of or damage to Covered Property at the premises described in the Declarations caused by or resulting from any Covered Cause of Loss.

#### 1. Covered Property

Covered Property, as used in this Coverage Form, means the type of property described in this section, A.1., and limited in A.2., Property Not Covered, if a Limit of Insurance is shown in the Declarations for that type of property.

#### a. Building, meaning the building or structure described in the Declarations, including:

- (1) Completed additions;
- (2) Fixtures, including outdoor fixtures;
- (3) Permanently installed:
  - (a) Machinery; and
  - (b) Equipment;
- (4) Personal property owned by you that is used to maintain or service the building or structure or its premises, including:
  - (a) Fire extinguishing equipment;
  - (b) Outdoor furniture;
  - (c) Floor coverings; and
  - (d) Appliances used for refrigerating, ventilating, cooking, dishwashing or laundering;
- (5) If not covered by other insurance:
  - (a) Additions under construction, alterations and repairs to the building or structure;
  - (b) Materials, equipment, supplies and temporary structures, on or within 100 feet of the described premises, used for making additions, alterations or repairs to the building or structure.

#### b. Your Business Personal Property located in or on the building described in the Declarations or in the open (or in a vehicle) within 100 feet of the described premises, consisting of the following unless otherwise specified in the Declarations or on the Your Business Personal Property - Separation of Coverage form:

- (1) Furniture and fixtures;
- (2) Machinery and equipment;
- (3) "Stock";
- (4) All other personal property owned by you and used in your business;
- (5) Labor, materials or services furnished or arranged by you on personal property of others;
- (6) Your use interest as tenant in improvements and betterments. Improvements and betterments are fixtures, alterations, installations or additions:
  - (a) Made a part of the building or structure you occupy but do not own; and
  - (b) You acquired or made at your expense but cannot legally remove;
- (7) Leased personal property for which you have a contractual responsibility to insure, unless otherwise provided for under Personal Property of Others.

#### c. Personal Property of Others that is:

- (1) In your care, custody or control; and
- (2) Located in or on the building described in the Declarations or in the open (or in a vehicle) within 100 feet of the described premises.

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However, our payment for loss of or damage to personal property of others will only be for the account of the owner of the property.

## 2. Property Not Covered

Covered Property does not include:

- a. Accounts, bills, currency, deeds, food stamps or other evidences of debt, money, notes or securities. Lottery tickets held for sale are not securities;
- b. Animals, unless owned by others and boarded by you, or if owned by you, only as "stock" while inside of buildings;
- c. Automobiles held for sale;
- d. Bridges, roadways, walks, patios or other paved surfaces;
- e. Contraband, or property in the course of illegal transportation or trade;
- f. The cost of excavations, grading, backfilling or filling;
- g. Foundations of buildings, structures, machinery or boilers if their foundations are below:
  - (1) The lowest basement floor; or
  - (2) The surface of the ground, if there is no basement;
- h. Land (including land on which the property is located), water, growing crops or lawns;
- i. Personal property while airborne or waterborne;
- j. Bulkheads, pilings, piers, wharves or docks;
- k. Property that is covered under another coverage form of this or any other policy in which it is more specifically described, except for the excess of the amount due (whether you can collect on it or not) from that other insurance;
- l. Retaining walls that are not part of a building;
- m. Underground pipes, flues or drains;

n. Electronic data, except as provided under Additional Coverages - Electronic Data. Electronic Data means information, facts or computer programs stored as or on, created or used on, or transmitted to or from computer software (including systems and applications software), on hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other repositories of computer software which are used with electronically controlled equipment. The term computer programs, referred to in the foregoing description of electronic data, means a set of related electronic instructions which direct the operations and functions of a computer or device connected to it, which enable the computer or device to receive, process, store, retrieve or send data. This paragraph, n., does not apply to your "stock" of prepackaged software.

- o. The cost to replace or restore the information on valuable papers and records, including those which exist as electronic data. Valuable papers and records include but are not limited to proprietary information, books of account, deeds, manuscripts, abstracts, drawings and card index systems. Refer to the Coverage Extension for Valuable Papers And Records (Other Than Electronic Data) for limited coverage for valuable papers and records other than those which exist as electronic data.
- p. Vehicles or self-propelled machines (including aircraft or watercraft) that:
  - (1) Are licensed for use on public roads; or
  - (2) Are operated principally away from the described premises.

This paragraph does not apply to:

- (a) Vehicles or self-propelled machines or autos you manufacture, process or warehouse;
- (b) Vehicles or self-propelled machines, other than autos, you hold for sale; or



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- (c) Rowboats or canoes out of water at the described premises;
- (d) Trailers, but only to the extent provided for in the Coverage Extension for Non-Owned Detached Trailers.
- q. The following property while outside of buildings:
  - (1) Grain, hay, straw or other crops;
  - (2) Fences, radio or television antennas (including satellite dishes) and their lead-in wiring, masts or towers, signs (other than signs attached to buildings), trees, shrubs or plants (other than "stock" of trees, shrubs or plants), all except as provided in the Coverage Extensions.

### 3. Covered Causes Of Loss

See applicable Causes of Loss Form as shown in the Declarations.

### 4. Additional Coverages

#### a. Debris Removal

- (1) Subject to Paragraphs (3) and (4), we will pay your expense to remove debris of Covered Property caused by or resulting from a Covered Cause of Loss that occurs during the policy period. The expenses will be paid only if they are reported to us in writing within 180 days of the date of direct physical loss or damage.
- (2) Debris Removal does not apply to costs to:
  - (a) Extract "pollutants" from land or water; or
  - (b) Remove, restore or replace polluted land or water.
- (3) Subject to the exceptions in Paragraph (4), the following provisions apply:
  - (a) The most we will pay for the total of direct physical loss or damage plus debris removal expense is the Limit of Insurance applicable to the Covered Property that has sustained loss or damage.

- (b) Subject to (a) above, the amount we will pay for debris removal expense is limited to 25% of the sum of the deductible plus the amount that we pay for direct physical loss or damage to the Covered Property that has sustained loss or damage.

- (4) We will pay up to an additional \$10,000 for debris removal expense, for each location, in any one occurrence of physical loss or damage to Covered Property, if one or both of the following circumstances apply:

- (a) The total of the actual debris removal expense plus the amount we pay for direct physical loss or damage exceeds the Limit of Insurance on the Covered Property that has sustained loss or damage.

- (b) The actual debris removal expense exceeds 25% of the sum of the deductible plus the amount that we pay for direct physical loss or damage to the Covered Property that has sustained loss or damage.

Therefore, if (4)(a) and/or (4)(b) apply, our total payment for direct physical loss or damage and debris removal expense may reach but will never exceed the Limit of Insurance on the Covered Property that has sustained loss or damage, plus \$10,000.



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**(5) Examples**

The following examples assume that there is no coinsurance penalty.

**Example #1**

Limit of Insurance	\$90,000
Amount of Deductible	\$ 500
Amount of Loss	\$50,000
Amount of Loss Payable	\$49,500
	(\$50,000 - \$500)
Debris Removal Expense	\$10,000
Debris Removal Expense Payable	\$10,000
	(\$10,000 is 20% of \$50,000)

The debris removal expense is less than 25% of the sum of the loss payable plus the deductible. The sum of the loss payable and the debris removal expense (\$49,500 + \$10,000 = \$59,500) is less than the Limit of Insurance. Therefore, the full amount of debris removal expense is payable in accordance with the terms of Paragraph (3).

**Example #2**

Limit of Insurance	\$90,000
Amount of Deductible	\$ 500
Amount of Loss	\$80,000
Amount of Loss Payable	\$79,500
	(\$80,000 - \$500)
Debris Removal Expense	\$30,000
Debris Removal Expense Payable	
	Basic Amount \$10,500
	Additional Amount \$10,000

The basic amount payable for debris removal expense under the terms of Paragraph (3) is calculated as follows: \$80,000 (\$79,500 + \$500) x .25 = \$20,000; capped at \$10,500. The cap applies because the sum of the loss payable (\$79,500) and the basic amount payable for debris removal expense (\$10,500) cannot exceed the Limit of Insurance (\$90,000).

The additional amount payable for debris removal expense is provided in accordance with the terms of Paragraph (4), because the debris removal expense (\$30,000) exceeds 25% of the loss payable plus the deductible (\$30,000 is 37.5% of \$80,000), and because the sum of the loss payable and debris removal expense (\$79,500 + \$30,000 = \$109,500) would exceed the Limit of Insurance (\$90,000). The additional amount of covered debris removal expense is \$10,000, the maximum payable under Paragraph (4). Thus the total payable for debris removal expense in this example is \$20,500; \$9,500 of the debris removal expense is not covered.

**b. Preservation of Property**

If it is necessary to move Covered Property from the described premises to preserve it from loss or damage by a Covered Cause of Loss, we will pay for any direct physical loss or damage to that property:

- (1) While it is being moved or while temporarily stored at another location; and
- (2) Only if the loss or damage occurs within 30 days after the property is first moved.

**c. Fire Department Service Charge**

When the fire department is called to save or protect Covered Property from a Covered Cause of Loss, we will pay up to \$1,000 for your liability for fire department service charges:

- (1) Assumed by contract or agreement prior to loss; or
- (2) Required by local ordinance.

No Deductible applies to this Additional Coverage.

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**d. Pollutant Clean Up and Removal**

We will pay your expense to extract "pollutants" from land or water at the described premises if the discharge, dispersal, seepage, migration, release or escape of the "pollutants" is caused by or results from a Covered Cause of Loss that occurs during the policy period. The expenses will be paid only if they are reported to us in writing within 180 days of the date on which the Covered Cause of Loss occurs.

This Additional Coverage does not apply to costs to test for, monitor or assess the existence, concentration or effects of "pollutants." But we will pay for testing which is performed in the course of extracting the "pollutants" from the land or water.

The most we will pay under this Additional Coverage for each described premises is \$10,000 for the sum of all covered expenses arising out of Covered Causes of Loss occurring during each separate 12 month period of this policy.

**e. Increased Cost of Construction**

(1) This Additional Coverage applies only to buildings to which the Replacement Cost Optional Coverage applies.

(2) In the event of damage by a Covered Cause of Loss to a building that is Covered Property, we will pay the increased costs incurred to comply with enforcement of an ordinance or law in the course of repair, rebuilding or replacement of damaged parts of that property, subject to the limitations stated in e.(3) through e.(9) of this Additional Coverage.

(3) The ordinance or law referred to in e.(2) of this Additional Coverage is an ordinance or law that regulates the construction or repair of buildings or establishes zoning or land use requirements at the described premises, and is in force at the time of loss.

(4) Under this Additional Coverage, we will not pay any costs due to an ordinance or law that:

(a) You were required to comply with before the loss, even when the building was undamaged; and

(b) You failed to comply with.

(5) Under this Additional Coverage, we will not pay for;

(a) The enforcement of any ordinance or law which requires demolition, repair, replacement, reconstruction, remodeling or remediation of property due to contamination by "pollutants" or due to the presence, growth, proliferation, spread or any activity of "fungus," wet or dry rot or bacteria; or

(b) Any costs associated with the enforcement of an ordinance or law which requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants," "fungus," wet or dry rot or bacteria.

(6) The most we will pay under this Additional Coverage, for each described building insured under this Coverage Form, is \$10,000 or 5% of the Limit of Insurance applicable to that building, whichever is less. If a damaged building is covered under a blanket Limit of Insurance which applies to more than one building or item of property, then the most we will pay under this Additional Coverage, for that damaged building, is the lesser of: \$10,000 or 5% times the value of the damaged building as of the time of loss times the applicable coinsurance percentage.

The amount payable under this Additional Coverage is additional insurance.

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## (7) With respect to this Additional Coverage:

(a) We will not pay for the Increased Cost of Construction:

(i) Until the property is actually repaired or replaced, at the same or another premises; and

(ii) Unless the repairs or replacement are made as soon as reasonably possible after the loss or damage, not to exceed two years. We may extend this period in writing during the two years.

(b) If the building is repaired or replaced at the same premises, or if you elect to rebuild at another premises, the most we will pay for the Increased Cost of Construction, subject to the provisions of e.(6) of this Additional Coverage, is the increased cost of construction at the same premises.

(c) If the ordinance or law requires relocation to another premises, the most we will pay for the Increased Cost of Construction, subject to the provisions of e.(6) of this Additional Coverage, is the increased cost of construction at the new premises.

(8) This Additional Coverage is not subject to the terms of the Ordinance or Law Exclusion, to the extent that such Exclusion would conflict with the provisions of this Additional Coverage.

(9) The costs addressed in the Loss Payment and Valuation Conditions, and the Replacement Cost Optional Coverage, in this Coverage Form, do not include the increased cost attributable to enforcement of an ordinance or law. The amount payable under this Additional Coverage, as stated in e.(6) of this Additional Coverage, is not subject to such limitation.

## f. Electronic Data

(1) Under this Additional Coverage, electronic data has the meaning described under Property Not Covered - Electronic Data.

(2) Subject to the provisions of this Additional Coverage, we will pay for the cost to replace or restore electronic data which has been destroyed or corrupted by a Covered Cause of Loss. To the extent that electronic data is not replaced or restored, the loss will be valued at the cost of replacement of the media on which the electronic data was stored, with blank media of substantially identical type.

(3) The Covered Causes of Loss applicable to Your Business Personal Property apply to this Additional Coverage - Electronic Data, subject to the following:

(a) If the Causes of Loss - Special Form applies, coverage under this Additional Coverage - Electronic Data is limited to the "specified causes of loss" as defined in that form, and Collapse as set forth in that Form.

(b) If the Causes of Loss - Broad Form applies, coverage under this Additional Coverage - Electronic Data includes Collapse as set forth in that Form.

(c) If the Causes of Loss Form is endorsed to add a Covered Cause of Loss, the additional Covered Cause of Loss does not apply to the coverage provided under this Additional Coverage - Electronic Data.

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(d) The Covered Causes of Loss include a virus, harmful code or similar instruction introduced into or enacted on a computer system (including electronic data) or a network to which it is connected, designed to damage or destroy any part of the system or disrupt its normal operation. But there is no coverage for loss or damage caused by or resulting from manipulation of a computer system (including electronic data) by any employee, including a temporary or leased employee, or by an entity retained by you or for you to inspect, design, install, modify, maintain, repair or replace that system.

(4) The most we will pay under this Additional Coverage - Electronic Data is \$2,500 for all loss or damage sustained in any one policy year, regardless of the number of occurrences of loss or damage or the number of premises, locations or computer systems involved. If loss payment on the first occurrence does not exhaust this amount, then the balance is available for subsequent loss or damage sustained in but not after that policy year. With respect to an occurrence which begins in one policy year and continues or results in additional loss or damage in a subsequent policy year(s), all loss or damage is deemed to be sustained in the policy year in which the occurrence began.

## 5. Coverage Extensions

Except as otherwise provided, the following Extensions apply to property located in or on the building described in the Declarations or in the open (or in a vehicle) within 100 feet of the described premises.

If a Coinsurance percentage of 80% or more or, a Value Reporting period symbol, is shown in the Declarations, you may extend the insurance provided by this Coverage Form as follows:

## a. Newly Acquired or Constructed Property

### (1) Buildings

If this policy covers Building, you may extend that insurance to apply to:

- (a) Your new buildings while being built on the described premises; and
- (b) Buildings you acquire at locations, other than the described premises, intended for:
  - (i) Similar use as the building described in the Declarations; or
  - (ii) Use as a warehouse.

The most we will pay for loss or damage under this Extension is \$250,000 at each building.

### (2) Your Business Personal Property

- (a) If this policy covers Your Business Personal Property, you may extend that insurance to apply to:
  - (i) Business personal property, including such property that you newly acquire, at any location you acquire other than at fairs, trade shows or exhibitions;
  - (ii) Business personal property, including such property that you newly acquire, located at your newly constructed or acquired buildings at the location described in the Declarations; or
  - (iii) Business personal property that you newly acquire, located at the described premises.

The most we will pay for loss or damage under this Extension is \$100,000 at each building.

### (b) This Extension does not apply to:

- (i) Personal property of others that is temporarily in your possession in the course of installing or performing work on such property; or
- (ii) Personal property of others that is temporarily in your possession in the course of your manufacturing or wholesaling activities.

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**(3) Period Of Coverage**

With respect to insurance on or at each newly acquired or constructed property, coverage will end when any of the following first occurs:

- (a) This policy expires.
- (b) 30 days expire after you acquire the property or begin construction of that part of the building that would qualify as covered property; or
- (c) You report values to us.

We will charge you additional premium for values reported from the date you acquire the property or begin construction of that part of the building that would qualify as covered property.

**b. Personal Effects and Property of Others**

You may extend the insurance that applies to Your Business Personal Property to apply to:

- (1) Personal effects owned by you, your officers, your partners or members, your managers or your employees. This extension does not apply to loss or damage by theft.
- (2) Personal property of others in your care, custody or control.

The most we will pay for loss or damage under this Extension is \$2,500 at each described premises. Our payment for loss of or damage to personal property of others will only be for the account of the owner of the property.

**c. Valuable Papers And Records (Other Than Electronic Data)**

- (1) You may extend the insurance that applies to Your Business Personal Property to apply to your cost to replace or restore the lost information on valuable papers and records for which duplicates do not exist. But this Extension does not apply to valuable papers and records which exist as electronic data. Electronic data has the meaning described under Property Not Covered - Electronic Data.

- (2) If the Causes of Loss - Special Form applies, coverage under this Extension is limited to the "specified causes of loss" as defined in that Form, and Collapse as set forth in that Form.

- (3) If the Causes of Loss - Broad Form applies, coverage under this Extension includes Collapse as set forth in that Form.

- (4) Under this Extension, the most we will pay to replace or restore the lost information is \$2,500 at each described premises, unless a higher limit is shown in the Declarations. Such amount is additional insurance. We will also pay for the cost of blank material for reproducing the records (whether or not duplicates exist), and (when there is a duplicate) for the cost of labor to transcribe or copy the records. The costs of blank material and labor are subject to the applicable Limit of Insurance on Your Business Personal Property and therefore coverage of such costs is not additional insurance.

**d. Property Off-Premises**

- (1) You may extend the insurance provided by this Coverage Form to apply to your Covered Property while it is away from the described premises, if it is:

- (a) Temporarily at a location you do not own, lease or operate;
- (b) In storage at a location you lease, provided the lease was executed after the beginning of the current policy term; or
- (c) At any fair, trade show or exhibition.

- (2) This Extension does not apply to property:

- (a) In or on a vehicle; or
- (b) In the care, custody or control of your salespersons, unless the property is in such care, custody or control at a fair, trade show or exhibition.

- (3) The most we will pay for loss or damage under this Extension is \$10,000.

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**e. Outdoor Property**

You may extend the insurance provided by this Coverage Form to apply to your outdoor fences, radio and television antennas (including satellite dishes), signs (other than signs attached to buildings), trees, shrubs and plants (other than "stock" of trees, shrubs or plants), including debris removal expense, caused by or resulting from any of the following causes of loss if they are Covered Causes of Loss;

- (1) Fire;
- (2) Lightning;
- (3) Explosion;
- (4) Riot or Civil Commotion; or
- (5) Aircraft.

The most we will pay for loss or damage under this Extension is \$1,000, but not more than \$250 for any one tree, shrub or plant. These limits apply to any one occurrence, regardless of the types or number of items lost or damaged in that occurrence.

**f. Non-Owned Detached Trailers**

- (1) You may extend the insurance that applies to Your Business Personal Property to apply to loss or damage to trailers that you do not own, provided that:

- (a) The trailer is used in your business;
- (b) The trailer is in your care, custody or control at the premises described in the Declarations; and

- (c) You have a contractual responsibility to pay for loss or damage to the trailer.

- (2) We will not pay for any loss or damage that occurs:

- (a) While the trailer is attached to any motor vehicle or motorized conveyance, whether or not the motor vehicle or motorized conveyance is in motion;
- (b) During hitching or unhitching operations, or when a trailer becomes accidentally unhitched from a motor vehicle or motorized conveyance.

- (3) The most we will pay for loss or damage under this Extension is \$5,000, unless a higher limit is shown in the Declarations.

- (4) This insurance is excess over the amount due (whether you can collect on it or not) from any other insurance covering such property.

Each of these Extensions is additional insurance unless otherwise indicated. The Additional Condition, Coinsurance, does not apply to these Extensions.

**B. EXCLUSIONS AND LIMITATIONS**

See applicable Causes of Loss Form as shown in the Declarations.

**C. LIMITS OF INSURANCE**

The most we will pay for loss or damage in any one occurrence is the applicable Limit of Insurance shown in the Declarations.

The most we will pay for loss or damage to outdoor signs attached to buildings is \$1,000 per sign in any one occurrence.

The limits applicable to the Fire Department Service Charge and Pollutant Clean Up and Removal Additional Coverages are in addition to the Limits of Insurance.

Payments under the Preservation of Property Additional Coverage will not increase the applicable Limit of Insurance.

**D. DEDUCTIBLE**

In any one occurrence of loss or damage (hereinafter referred to as loss), we will first reduce the amount of loss if required by the Coinsurance Condition or the Agreed Value Optional Coverage. If the adjusted amount of loss is less than or equal to the Deductible, we will not pay for that loss. If the adjusted amount of loss exceeds the Deductible, we will then subtract the Deductible from the adjusted amount of loss, and will pay the resulting amount or the Limit of Insurance, whichever is less.

When the occurrence involves loss to more than one item of Covered Property and separate Limits of Insurance apply, the losses will not be combined in determining application of the Deductible. But the Deductible will be applied only once per occurrence.



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**Example No. 1:**

(This example assumes there is no coinsurance penalty.)

Deductible: \$250

Limit of Insurance - Bldg. 1: \$60,000

Limit of Insurance - Bldg. 2: \$80,000

Loss to Bldg. 1: \$60,100

Loss to Bldg. 2: \$90,000

The amount of loss to Bldg. 1 (\$60,100) is less than the sum (\$60,250) of the Limit of Insurance applicable to Bldg. 1 plus the Deductible.

The Deductible will be subtracted from the amount of loss in calculating the loss payable for Bldg. 1:

\$60,100

-250

---

\$59,850 Loss Payable - Bldg. 1

The Deductible applies once per occurrence and therefore is not subtracted in determining the amount of loss payable for Bldg. 2. Loss payable for Bldg. 2 is the Limit of Insurance of \$80,000.

Total amount of loss payable: \$59,850 + 80,000 = \$139,850.

**Example No. 2:**

(This example, too, assumes there is no coinsurance penalty.)

The Deductible and Limits of Insurance are the same as those in Example No. 1.

Loss to Bldg. 1: \$70,000 (exceeds Limit of Insurance plus Deductible)

Loss to Bldg. 2: \$90,000 (exceeds Limit of Insurance plus Deductible)

Loss Payable - Bldg. 1: \$60,000 (Limit of Insurance)

Loss Payable - Bldg. 2: \$80,000 (Limit of Insurance)

Total amount of loss payable: \$140,000

**E. LOSS CONDITIONS**

The following conditions apply in addition to the Common Policy Conditions and the Commercial Property Conditions.

**1. Abandonment**

There can be no abandonment of any property to us.

**2. Appraisal**

If we and you disagree on the value of the property or the amount of loss, either may make written demand for an appraisal of the loss. In this event, each party will select a competent and impartial appraiser. The two appraisers will select an umpire. If they cannot agree, either may request that selection be made by a judge of a court having jurisdiction. The appraisers will state separately the value of the property and amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:

- a. Pay its chosen appraiser; and
- b. Bear the other expenses of the appraisal and umpire equally.

If there is an appraisal, we will still retain our right to deny the claim.

**3. Duties In The Event Of Loss Or Damage**

- a. You must see that the following are done in the event of loss or damage to Covered Property:

- (1) Notify the police if a law may have been broken.
- (2) Give us prompt notice of the loss or damage. Include a description of the property involved.
- (3) As soon as possible, give us a description of how, when and where the loss or damage occurred.
- (4) Take all reasonable steps to protect the Covered Property from further damage, and keep a record of your expenses necessary to protect the Covered Property; for consideration in the settlement of the claim. This will not increase the Limit of Insurance. However, we will not pay for any subsequent loss or damage resulting from a cause of loss that is not a Covered Cause of Loss. Also, if feasible, set the damaged property aside and in the best possible order for examination.

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(5) At our request, give us complete inventories of the damaged and undamaged property. Include quantities, costs, values and amount of loss claimed.

(6) As often as may be reasonably required, permit us to inspect the property proving the loss or damage and examine your books and records.

Also permit us to take samples of damaged and undamaged property for inspection, testing and analysis, and permit us to make copies from your books and records.

(7) Send us a signed, sworn proof of loss containing the information we request to investigate the claim. You must do this within 60 days after our request. We will supply you with the necessary forms.

(8) Cooperate with us in the investigation or settlement of the claim.

b. We may examine any insured under oath, while not in the presence of any other insured and at such times as may be reasonably required, about any matter relating to this insurance or the claim, including an insured's books and records. In the event of an examination, an insured's answers must be signed.

#### 4. Loss Payment

a. In the event of loss or damage covered by this Coverage Form, at our option, we will either:

- (1) Pay the value of lost or damaged property;
- (2) Pay the cost of repairing or replacing the lost or damaged property, subject to b. below;
- (3) Take all or any part of the property at an agreed or appraised value; or
- (4) Repair, rebuild or replace the property with other property of like kind and quality, subject to b. below.

We will determine the value of lost or damaged property, or the cost of its repair or replacement, in accordance with the applicable terms of the Valuation Condition in this Coverage Form or any applicable provision which amends or supersedes the Valuation Condition.

b. The cost to repair, rebuild or replace does not include the increased cost attributable to enforcement of any ordinance or law regulating the construction, use or repair of any property.

c. We will give notice of our intentions within 30 days after we receive the sworn proof of loss.

d. We will not pay you more than your financial interest in the Covered Property.

e. We may adjust losses with the owners of lost or damaged property if other than you. If we pay the owners, such payments will satisfy your claims against us for the owners' property. We will not pay the owners more than their financial interest in the Covered Property.

f. We may elect to defend you against suits arising from claims of owners of property. We will do this at our expense.

g. We will pay for covered loss or damage within 30 days after we receive the sworn proof of loss, if you have complied with all of the terms of this coverage form and:

(1) We have reached agreement with you on the amount of loss; or

(2) An appraisal award has been made.

#### 5. Recovered Property

If either you or we recover any property after loss settlement, that party must give the other prompt notice. At your option, the property will be returned to you. You must then return to us the amount we paid to you for the property. We will pay recovery expenses and the expenses to repair the recovered property, subject to the Limit of Insurance.

#### 6. Vacancy

##### a. Description of Terms

(1) As used in this Vacancy Condition, the term building and the term vacant have the meanings set forth in (1)(a) and (1)(b) below:

(a) When this policy is issued to a tenant, and with respect to that tenant's interest in Covered Property, building means the unit or suite rented or leased to the tenant. Such building is vacant when it does not contain enough business personal property to conduct customary operations.



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(b) When this policy is issued to the owner or general lessee of a building, building means the entire building. Such building is vacant unless at least 31% of its total square footage is:

- (i) Rented to a lessee or sub-lessee and used by the lessee or sub-lessee to conduct its customary operations; and/or
- (ii) Used by the building owner to conduct customary operations.

(2) Buildings under construction or renovation are not considered vacant.

#### b. Vacancy Provisions

If the building where loss or damage occurs has been vacant for more than 60 consecutive days before that loss or damage occurs:

(1) We will not pay for any loss or damage caused by any of the following even if they are Covered Causes of Loss:

- (a) Vandalism;
- (b) Sprinkler leakage, unless you have protected the system against freezing;
- (c) Building glass breakage;
- (d) Water damage;
- (e) Theft; or
- (f) Attempted theft.

(2) With respect to Covered Causes of Loss other than those listed in b.(1)(a) through b.(1)(f) above, we will reduce the amount we would otherwise pay for the loss or damage by 15%.

#### 7. Valuation

We will determine the value of Covered Property in the event of loss or damage as follows:

- a. At actual cash value as of the time of loss or damage, except as provided in b., c., d., e. and f. below.

b. If the Limit of Insurance for Building satisfies the Additional Condition, Coinsurance, and the cost to repair or replace the damaged building property is \$2,500 or less, we will pay the cost of building repairs or replacement.

The cost of building repairs or replacement does not include the increased cost attributable to enforcement of any ordinance or law regulating the construction, use or repair of any property. However, the following property will be valued at the actual cash value even when attached to the building:

- (1) Awnings or floor coverings;
- (2) Appliances for refrigerating, ventilating, cooking, dishwashing or laundering; or
- (3) Outdoor equipment or furniture.

c. "Stock" you have sold but not delivered at the selling price less discounts and expenses you otherwise would have had.

d. Glass at the cost of replacement with safety glazing material if required by law.

e. Tenant's Improvements and Betterments at:

- (1) Actual cash value of the lost or damaged property if you make repairs promptly.
- (2) A proportion of your original cost if you do not make repairs promptly. We will determine the proportionate value as follows:
  - (a) Multiply the original cost by the number of days from the loss or damage to the expiration of the lease; and
  - (b) Divide the amount determined in (a) above by the number of days from the installation of improvements to the expiration of the lease.

If your lease contains a renewal option, the expiration of the renewal option period will replace the expiration of the lease in this procedure.

(3) Nothing if others pay for repairs or replacement.

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**F. ADDITIONAL CONDITIONS**

The following conditions apply in addition to the Common Policy Conditions and the Commercial Property Conditions.

**1. Coinsurance**

If a Coinsurance percentage is shown in the Declarations, the following condition applies.

- a. We will not pay the full amount of any loss if the value of Covered Property at the time of loss times the Coinsurance percentage shown for it in the Declarations is greater than the Limit of Insurance for the property.

Instead, we will determine the most we will pay using the following steps:

- (1) Multiply the value of Covered Property at the time of loss by the Coinsurance percentage;
- (2) Divide the Limit of Insurance of the property by the figure determined in step (1);
- (3) Multiply the total amount of loss, before the application of any deductible, by the figure determined in step (2); and
- (4) Subtract the deductible from the figure determined in step (3).

We will pay the amount determined in step (4) or the limit of insurance, whichever is less. For the remainder, you will either have to rely on other insurance or absorb the loss yourself.

**Example No. 1 (Underinsurance):**

When: The value of the property is \$250,000  
 The Coinsurance percentage for it is 80%  
 The Limit of Insurance for it is \$100,000  
 The Deductible is \$250  
 The amount of loss is \$40,000

Step(1):  $\$250,000 \times 80\% = \$200,000$

(the minimum amount of insurance to meet your Coinsurance requirements)

Step(2):  $\$100,000 / \$200,000 = .50$

Step(3):  $\$40,000 \times .50 = \$20,000$

Step(4):  $\$20,000 - \$250 = \$19,750$

We will pay no more than \$19,750. The remaining \$20,250 is not covered.

**Example No. 2 (Adequate Insurance):**

When: The value of the property is \$250,000  
 The Coinsurance percentage for it is 80%  
 The Limit of Insurance for it is \$200,000  
 The Deductible is \$250  
 The amount of loss is \$40,000

The minimum amount of insurance to meet your coinsurance requirement is \$200,000 ( $\$250,000 \times 80\%$ ). Therefore, the Limit of Insurance in this Example is adequate and no penalty applies. We will pay no more than \$39,750 ( $\$40,000$  amount of loss minus the deductible of \$250).

- b. If one Limit of Insurance applies to two or more separate items, this condition will apply to the total of all property to which the limit applies.

**Example No. 3:**

When: The value of the property is:  
 Bldg. at Location No. 1 \$75,000  
 Bldg. at Location No. 2 \$100,000  
 Personal Property at Location No. 2 \$75,000  
\$250,000  
 The Coinsurance percentage for it is 90%  
 The Limit of Insurance for Buildings and Personal Property at Location Nos. 1 and 2 is \$180,000  
 The Deductible is \$1,000  
 The amount of loss is Bldg. at Location No. 2 \$30,000  
 Personal Property at Location No. 2 \$20,000  
\$50,000

Step(1):  $\$250,000 \times 90\% = \$225,000$

(the minimum amount of insurance to meet your Coinsurance requirements and to avoid the penalty shown below)

Step(2):  $\$180,000 / \$225,000 = .80$

Step(3):  $\$50,000 \times .80 = \$40,000$

Step(4):  $\$40,000 - \$1,000 = \$39,000$

We will pay no more than \$39,000. The remaining \$11,000 is not covered.

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**2. Mortgageholders**

- a. The term "mortgageholder" includes trustee.
- b. We will pay for covered loss of or damage to buildings or structures to each mortgageholder shown in the Mortgagee Schedule in their order of precedence, as interests may appear.
- c. The mortgageholder has the right to receive loss payment even if the mortgageholder has started foreclosure or similar action on the building or structure.
- d. If we deny your claim because of your acts or because you have failed to comply with the terms of this Coverage Form, the mortgageholder will still have the right to receive loss payment if the mortgageholder:
  - (1) Pays any premium due under this Coverage Form at our request if you have failed to do so;
  - (2) Submits a signed, proof of loss within 60 days after receiving notice from us of your failure to do so; and
  - (3) Has notified us of any change in ownership, occupancy or substantial change in risk known to the mortgageholder.

All of the terms of this Coverage Form will then apply directly to the mortgageholder.

- e. If we pay the mortgageholder for any loss or damage and deny payment to you because of your acts or because you have failed to comply with the terms of this Coverage Form:
  - (1) The mortgageholder's rights under the mortgage will be transferred to us to the extent of the amount we pay; and
  - (2) The mortgageholder's right to recover the full amount of the mortgageholder's claim will not be impaired.

At our option, we may pay to the mortgageholder the whole principal on the mortgage plus any accrued interest. In this event, your mortgage and note will be transferred to us and you will pay your remaining mortgage debt to us.

- f. If we cancel this policy, we will give written notice to the mortgageholder at least:

- (1) 10 days before the effective date of cancellation if we cancel for your nonpayment of premium; or
- (2) 30 days before the effective date of cancellation if we cancel for any other reason.

- g. If we elect not to renew this policy, we will give written notice to the mortgageholder at least 10 days before the expiration date of this policy.

**G. OPTIONAL COVERAGES**

If shown as applicable in the Declarations, the following Optional Coverages apply separately to each item.

**1. Agreed Value**

- a. The Additional Condition, Coinsurance, does not apply to Covered Property to which this Optional Coverage applies. We will pay no more for loss of or damage to that property than the proportion that the Limit of Insurance under this Coverage Form for the property bears to the Agreed Value shown for it in the Declarations.
- b. If the expiration date for this Optional Coverage shown in the Declarations is not extended, the Additional Condition, Coinsurance, is reinstated and this Optional Coverage expires.
- c. The terms of this Optional Coverage apply only to loss or damage that occurs:
  - (1) On or after the effective date of this Optional Coverage; and
  - (2) Before the Agreed Value expiration date shown in the Declarations or the policy expiration date, whichever occurs first.

**2. Inflation Guard**

- a. The Limit of Insurance for property to which this Optional Coverage applies will automatically increase by the annual percentage shown in the Declarations.
- b. The amount of increase will be:
  - (1) The Limit of Insurance that applied on the most recent of the policy inception date, the policy anniversary date, or any other policy change amending the Limit of Insurance, times

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- (2) The percentage of annual increase shown in the Declarations, expressed as a decimal (example: 8% is .08), times
- (3) The number of days since the beginning of the current policy year or the effective date of the most recent policy change amending the Limit of Insurance, divided by 365.

**Example:**

If: The applicable Limit of Insurance is	\$100,000
The annual percentage increase is	8%
The number of days since the beginning of the policy year (or last policy change) is	146
The amount of increase is	
\$100,000 X .08 X 146	
divided by 365 =	\$ 3,200

**3. Replacement Cost**

- a. Replacement Cost (without deduction for depreciation) replaces Actual Cash Value in the Loss Condition, Valuation, of this Coverage Form.
- b. This Optional Coverage does not apply to:
- (1) Personal property of others;
  - (2) Contents of a residence;
  - (3) Works of art, antiques or rare articles, including etchings, pictures, statuary, marbles, bronzes, porcelains and bric-a-brac; or
  - (4) "Stock," unless the Including "Stock" option is shown in the Declarations.

Under the terms of this Replacement Cost Optional Coverage, tenants' improvements and betterments are not considered to be the personal property of others.

- c. You may make a claim for loss or damage covered by this insurance on an actual cash value basis instead of on a replacement cost basis. In the event you elect to have loss or damage settled on an actual cash value basis, you may still make a claim for the additional coverage this Optional Coverage provides if you notify us of your intent to do so within 180 days after the loss or damage.

- d. We will not pay on a replacement cost basis for any loss or damage:

- (1) Until the lost or damaged property is actually repaired or replaced; and
- (2) Unless the repairs or replacement are made as soon as reasonably possible after the loss or damage.

With respect to tenants' improvements and betterments, the following also apply:

- (3) If the conditions in d.(1) and d.(2) above are not met, the value of tenants' improvements and betterments will be determined as a proportion of your original cost, as set forth in the Valuation Condition of this Coverage Form; and
  - (4) We will not pay for loss or damage to tenants' improvements and betterments if others pay for repairs or replacement.
- e. We will not pay more for loss or damage on a replacement cost basis than the least of (1), (2) or (3), subject to f. below:
- (1) The Limit of Insurance applicable to the lost or damaged property;
  - (2) The cost to replace the lost or damaged property with other property:
    - (a) Of comparable material and quality; and
    - (b) Used for the same purpose; or
  - (3) The amount actually spent that is necessary to repair or replace the lost or damaged property.

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If the building is rebuilt at a new premises, the cost described in e.(2) above is limited to the cost which would have been incurred if the building had been rebuilt at the original premises.

- f. The cost of repair or replacement does not include the increased cost attributable to enforcement of any ordinance or law regulating the construction, use or repair of any property.

#### 4. Extension Of Replacement Cost To Personal Property Of Others

- a. If the Replacement Cost Optional Coverage is shown as applicable in the Declarations, then this Extension may also be shown as applicable. If the Declarations show this Extension as applicable, then Paragraph 3.b.(1) of the Replacement Cost Optional Coverage is deleted and all other provisions of the Replacement Cost Optional Coverage apply to replacement cost on personal property of others.

- b. With respect to replacement cost on the personal property of others, the following limitation applies:

If an item(s) of personal property of others is subject to a written contract which governs your liability for loss or damage to that item(s), then valuation of that item(s) will be based on the amount for which you are liable under such contract, but not to exceed the lesser of the replacement cost of the property or the applicable Limit of Insurance.

#### H. DEFINITIONS

1. "Fungus" means any type or form of fungus, including mold or mildew, and any mycotoxins, spores, scents or by-products produced or released by fungi.
2. "Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.
3. "Stock" means merchandise held in storage or for sale, raw materials and in-process or finished goods, including supplies used in their packing or shipping.

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## Commercial Property Conditions

CP 0090 (07-88)

This Coverage Form is subject to the following conditions, the Common Policy Conditions and applicable Loss Conditions and Additional Conditions in Commercial Property Coverage Forms.

### A. CONCEALMENT, MISREPRESENTATION OR FRAUD

This Coverage Form is void in any case of fraud by you as it relates to this Coverage Form at any time. It is also void if you or any other insured, at any time, intentionally conceal or misrepresent a material fact concerning:

1. This Coverage Form;
2. The Covered Property;
3. Your interest in the Covered Property; or
4. A claim under this Coverage Form.

### B. CONTROL OF PROPERTY

Any act or neglect of any person other than you beyond your direction or control will not affect this insurance.

The breach of any condition of this Coverage Form at any one or more locations will not affect coverage at any location where, at the time of loss or damage, the breach of condition does not exist.

### C. INSURANCE UNDER TWO OR MORE COVERAGES

If two or more of this policy's coverages apply to the same loss or damage, we will not pay more than the actual amount of the loss or damage.

### D. LEGAL ACTION AGAINST US

No one may bring a legal action against us under this Coverage Form unless:

1. There has been full compliance with all of the terms of this Coverage Form; and
2. The action is brought within 2 years after the date on which the direct physical loss or damage occurred.

### E. LIBERALIZATION

If we adopt any revision that would broaden the coverage under this Coverage Form without additional premium within 45 days prior to or during the policy period, the broadened coverage will immediately apply to this Coverage Form.

### F. NO BENEFIT TO BAILEE

No person or organization, other than you, having custody of Covered Property will benefit from this insurance.

### G. OTHER INSURANCE

1. You may have other insurance subject to the same plan, terms, conditions and provisions as the insurance under this Coverage Form. If you do, we will pay our share of the covered loss or damage. Our share is the proportion that the applicable Limit of Insurance under this Coverage Form bears to the Limits of Insurance of all insurance covering on the same basis.
2. If there is other insurance covering the same loss or damage, other than that described in 1. above, we will pay only for the amount of covered loss or damage in excess of the amount due from that other insurance, whether you can collect on it or not. But we will not pay more than the applicable Limit of Insurance.

### H. POLICY PERIOD, COVERAGE TERRITORY

Under this Coverage Form:

1. We cover loss or damage commencing:
  - a. During the policy period shown in the Declarations; and
  - b. Within the coverage territory.
2. The coverage territory is:
  - a. The United States of America (including its territories and possessions);
  - b. Puerto Rico; and
  - c. Canada.

### I. TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US

If any person or organization to or for whom we make payment under this coverage form has rights to recover damages from another, those rights are transferred to us to the extent of our payment. That person or organization must do everything necessary to secure our rights and must do nothing after loss to impair them. But you may waive your rights against another party in writing:

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- 
1. Prior to a loss to your Covered Property or Covered Income.
  2. After a loss to your Covered Property or Covered Income only if, at time of loss, that party is one of the following:
    - a. Someone insured by this insurance;
    - b. A business firm:
      - (1) Owned or controlled by you; or
      - (2) That owns or controls you; or
    - c. Your tenant.
- This will not restrict your insurance.

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## Causes Of Loss - Special Form

CP 1030 (04-02)

Words and phrases that appear in quotation marks have special meaning. Refer to SECTION F - DEFINITIONS.

### A. COVERED CAUSES OF LOSS

When Special is shown in the Declarations, Covered Causes of Loss means RISKS OF DIRECT PHYSICAL LOSS unless the loss is:

1. Excluded in Section B., Exclusions; or
  2. Limited in Section C., Limitations;
- that follow.

### B. EXCLUSIONS

1. We will not pay for loss or damage caused directly or indirectly by any of the following. Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss.

#### a. Ordinance or Law

The enforcement of any ordinance or law:

- (1) Regulating the construction, use or repair of any property; or
- (2) Requiring the tearing down of any property, including the cost of removing its debris.

This exclusion, Ordinance or Law, applies whether the loss results from:

- (1) An ordinance or law that is enforced even if the property has not been damaged; or
- (2) The increased costs incurred to comply with an ordinance or law in the course of construction, repair, renovation, remodeling or demolition of property, or removal of its debris, following a physical loss to that property.

#### b. Earth Movement

- (1) Earthquake, including any earth sinking, rising or shifting related to such event;
- (2) Landslide, including any earth sinking, rising or shifting related to such event;
- (3) Mine subsidence, meaning subsidence of a man-made mine, whether or not mining activity has ceased;

- (4) Earth sinking (other than sinkhole collapse), rising or shifting including soil conditions which cause settling, cracking or other disarrangement of foundations or other parts of reality. Soil conditions include contraction, expansion, freezing, thawing, erosion, improperly compacted soil and the action of water under the ground surface.

But if Earth Movement, as described in b.(1) through (4) above, results in fire or explosion, we will pay for the loss or damage caused by that fire or explosion.

- (5) Volcanic eruption, explosion or effusion. But if volcanic eruption, explosion or effusion results in fire, building glass breakage or Volcanic Action, we will pay for the loss or damage caused by that fire, building glass breakage or Volcanic Action.

Volcanic action means direct loss or damage resulting from the eruption of a volcano when the loss or damage is caused by:

- (a) Airborne volcanic blast or airborne shock waves;
- (b) Ash, dust or particulate matter; or
- (c) Lava flow.

All volcanic eruptions that occur within any 168-hour period will constitute a single occurrence.

Volcanic action does not include the cost to remove ash, dust or particulate matter that does not cause direct physical loss or damage to the described property.



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**c. Governmental Action**

Seizure or destruction of property by order of governmental authority.

But we will pay for loss or damage caused by or resulting from acts of destruction ordered by governmental authority and taken at the time of a fire to prevent its spread, if the fire would be covered under this Coverage Form.

**d. Nuclear Hazard**

Nuclear reaction or radiation, or radioactive contamination, however caused.

But if nuclear reaction or radiation, or radioactive contamination, results in fire, we will pay for the loss or damage caused by that fire.

**e. Utility Services**

The failure of power or other utility service supplied to the described premises, however caused, if the failure occurs away from the described premises. Failure includes lack of sufficient capacity and reduction in supply.

But if the failure of power or other utility service results in a Covered Cause of Loss, we will pay for the loss or damage caused by that Covered Cause of Loss.

This exclusion does not apply to the Business Income coverage or to Extra Expense coverage. Instead, the Special Exclusion in paragraph B.4.a.(1) applies to these coverages.

**f. War and Military Action**

(1) War, including undeclared or civil war;

(2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or

(3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

**g. Water**

(1) Flood, surface water, waves, tides, tidal waves, overflow of any body of water, or their spray, all whether driven by wind or not;

(2) Mudslide or mudflow;

(3) Water that backs up or overflows from a sewer, drain or sump; or

(4) Water under the ground surface pressing on, or flowing or seeping through:

(a) Foundations, walls, floors or paved surfaces;

(b) Basements, whether paved or not; or

(c) Doors, windows or other openings.

But if Water, as described in g. (1) through g. (4) above, results in fire, explosion or sprinkler leakage, we will pay for the loss or damage caused by that fire, explosion or sprinkler leakage.

**h. "Fungus," Wet Rot, Dry Rot And Bacteria**

Presence, growth, proliferation, spread or any activity of "fungus," wet or dry rot or bacteria.

But if "fungus," wet or dry rot or bacteria results in a "specified cause of loss," we will pay for the loss or damage caused by that "specified cause of loss."

This exclusion does not apply:

(1) When "fungus," wet or dry rot or bacteria results from fire or lightning; or

(2) To the extent that coverage is provided in the Additional Coverage - Limited Coverage For "Fungus," Wet Rot, Dry Rot And Bacteria with respect to loss or damage by a cause of loss other than fire or lightning.

Exclusions B.1.a. through B.1.h. apply whether or not the loss event results in wide-spread damage or affects a substantial area.

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2. We will not pay for loss or damage caused by or resulting from any of the following:

- a. Artificially generated electrical current, including electric arcing, that disturbs electrical devices, appliances or wires.

But if artificially generated electrical current results in fire, we will pay for the loss or damage caused by that fire.

- b. Delay, loss of use or loss of market.

- c. Smoke, vapor or gas from agricultural smudging or industrial operations.

- d. (1) Wear and tear;

- (2) Rust, corrosion, fungus, decay, deterioration, hidden or latent defect or any quality in property that causes it to damage or destroy itself;

- (3) Smog;

- (4) Settling, cracking, shrinking or expansion;

- (5) Nesting or infestation, or discharge or release of waste products or secretions, by insects, birds, rodents or other animals.

- (6) Mechanical breakdown, including rupture or bursting caused by centrifugal force. But if mechanical breakdown results in elevator collision, we will pay for the loss or damage caused by that elevator collision.

- (7) The following causes of loss to personal property:

- (a) Dampness or dryness of atmosphere;

- (b) Changes in or extremes of temperature; or

- (c) Marring or scratching.

But if an excluded cause of loss that is listed in 2.d. (1) through (7) results in a "specified cause of loss" or building glass breakage, we will pay for the loss or damage caused by that "specified cause of loss" or building glass breakage.

- e. Explosion of steam boilers, steam pipes, steam engines or steam turbines owned or leased by you, or operated under your control. But if explosion of steam boilers, steam pipes, steam engines or steam turbines results in fire or combustion explosion, we will pay for the loss or damage caused by that fire or combustion explosion. We will also pay for loss or damage caused by or resulting from the explosion of gases or fuel within the furnace of any fired vessel or within the flues or passages through which the gases of combustion pass.

- f. Continuous or repeated seepage or leakage of water, or the presence or condensation of humidity, moisture or vapor, that occurs over a period of 14 days or more.

- g. Water, other liquids, powder or molten material that leaks or flows from plumbing, heating, air conditioning or other equipment (except fire protective systems) caused by or resulting from freezing, unless:

- (1) You do your best to maintain heat in the building or structure; or

- (2) You drain the equipment and shut off the supply if the heat is not maintained.

- h. Dishonest or criminal act by you, any of your partners, members, officers, managers, employees, (including leased employees) directors, trustees, authorized representatives or anyone to whom you entrust the property for any purpose:

- (1) Acting alone or in collusion with others; or

- (2) Whether or not occurring during the hours of employment.

This exclusion does not apply to acts of destruction by your employees (including leased employees); but theft by employees (including leased employees) is not covered.

- i. Voluntary parting with any property by you or anyone else to whom you have entrusted the property if induced to do so by any fraudulent scheme, trick, device or false pretense.

- j. Rain, snow, ice or sleet to personal property in the open.

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- k. Collapse, except as provided below in the Additional Coverage for Collapse. But if collapse results in a Covered Cause of Loss at the described premises, we will pay for the loss or damage caused by that Covered Cause of Loss.
- l. Discharge, dispersal, seepage, migration, release or escape of "pollutants" unless the discharge, dispersal, seepage, migration, release or escape is itself caused by any of the "specified causes of loss". But if the discharge, dispersal, seepage, migration, release or escape of "pollutants" results in a "specified causes of loss", we will pay for the loss or damage caused by that "specified cause of loss."
- This Exclusion, l., does not apply to damage to glass caused by chemicals applied to the glass.
- m. Neglect of an insured to use all reasonable means to save and preserve property from further damage at and after the time of loss.
3. We will not pay for loss or damage caused by or resulting from any of the following, 3.a. through 3.c. But if an excluded cause of loss that is listed in 3.a. through 3.c. results in a Covered Cause of Loss, we will pay for the loss or damage caused by that Covered Cause of Loss.
- a. Weather conditions. But this exclusion only applies if weather conditions contribute in any way with a cause or event excluded in paragraph 1. above to produce the loss or damage.
- b. Acts or decisions, including the failure to act or decide, of any person, group, organization or governmental body.
- c. Faulty, inadequate or defective:
- (1) Planning, zoning, development, surveying, siting;
  - (2) Design, specifications, workmanship, repair, construction, renovation, remodeling, grading, compaction;
  - (3) Materials used in repair, construction, renovation or remodeling; or
  - (4) Maintenance;
- of part or all of any property on or off the described premises.

#### 4. Special Exclusions

The following provisions apply only to the specified Coverage Forms.

- a. Business Income (And Extra Expense) Coverage Form, Business Income (Without Extra Expense) Coverage Form, or Extra Expense Coverage Form

We will not pay for:

- (1) Any loss caused directly or indirectly, by the failure of power or other utility service supplied to the described premises, however caused, if the failure occurs outside of a covered building. Failure includes lack of sufficient capacity and reduction in supply.

But if the failure of power or other utility service results in a Covered Cause of Loss, we will pay for the loss resulting from that Covered Cause of Loss.

- (2) Any loss caused by or resulting from:

- (a) Damage or destruction of "finished stock;" or
- (b) The time required to reproduce "finished stock."

This exclusion does not apply to Extra Expense.

- (3) Any loss caused by or resulting from direct physical loss or damage to radio or television antennas (including satellite dishes) and their lead-in wiring, masts or towers.

- (4) Any increase of loss caused by or resulting from:

- (a) Delay in rebuilding, repairing or replacing the property or resuming "operations," due to interference at the location of the rebuilding, repair or replacement by strikers or other persons; or

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(b) Suspension, lapse or cancellation of any license, lease or contract. But if the suspension, lapse or cancellation is directly caused by the suspension of "operations," we will cover such loss that affects your Business Income during the "period of restoration" and any extension of the "period of restoration" in accordance with the terms of the Extended Business Income Additional Coverage and the Extended Period Of Indemnity Optional Coverage or any variation of these.

5. Any Extra Expense caused by or resulting from suspension, lapse or cancellation of any license, lease or contract beyond the "period of restoration."

(6) Any other consequential loss.

**b. Leasehold Interest Coverage Form**

(1) Paragraph B.1.a., Ordinance or Law, does not apply to insurance under this Coverage Form.

(2) We will not pay for any loss caused by:

- (a) Your cancelling the lease;
- (b) The suspension, lapse, or cancellation of any license; or
- (c) Any other consequential loss.

**c. Legal Liability Coverage Form**

(1) The following Exclusions do not apply to insurance under this Coverage Form:

- (a) Paragraph B.1.a., Ordinance or Law;
- (b) Paragraph B.1.c., Governmental Action;
- (c) Paragraph B.1.d., Nuclear Hazard;
- (d) Paragraph B.1.e., Utility Services; and
- (e) Paragraph B.1.f., War and Military Action.

(2) The following additional exclusions apply to insurance under this Coverage Form.

**(a) Contractual Liability**

We will not defend any claim or "suit," or pay damages that you are legally liable to pay, solely by reason of your assumption of liability in a contract or agreement. But this exclusion does not apply to a written lease agreement in which you have assumed liability for building damage resulting from an actual or attempted burglary or robbery, provided that:

- (i) Your assumption of liability was executed prior to the accident; and
- (ii) The building is Covered Property under this Coverage Form.

**(b) Nuclear Hazard**

We will not defend any claim or "suit," or pay any damages, loss, expense or obligation, resulting from nuclear reaction or radiation, or radioactive contamination, however caused.

**C. LIMITATIONS**

The following limitations apply to all policy forms and endorsements, unless otherwise stated.

1. We will not pay for loss of or damage to property, as described and limited in this section. In addition, we will not pay for any loss that is a consequence of loss or damage as described and limited in this section.

- a. Steam boilers, steam pipes, steam engines or steam turbines caused by or resulting from any condition or event inside such equipment. But we will pay for loss of or damage to such equipment caused by or resulting from an explosion of gases or fuel within the furnace of any fired vessel or within the flues or passages through which the gases of combustion pass.
- b. Hot water boilers or other water heating equipment caused by or resulting from any condition or event inside such boilers or equipment, other than an explosion.

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- c. The interior of any building or structure, or to personal property in the building or structure, caused by or resulting from rain, snow, sleet, ice, sand or dust, whether driven by wind or not, unless:
- (1) The building or structure first sustains damage by a Covered Cause of Loss to its roof or walls through which the rain, snow, sleet, ice, sand or dust enters; or
  - (2) The loss or damage is caused by or results from thawing of snow, sleet or ice on the building or structure.
- d. Building materials and supplies not attached as part of the building or structure, caused by or resulting from theft.
- However, this limitation does not apply to:
- (1) Building materials and supplies held for sale by you, unless they are insured under the Builders Risk Coverage Form; or
  - (2) Business Income coverage or Extra Expense coverage.
- e. Property that is missing, where the only evidence of the loss or damage is a shortage disclosed on taking inventory, or other instances where there is no physical evidence to show what happened to the property.
- f. Property that has been transferred to a person or to a place outside the described premises on the basis of unauthorized instructions.
2. We will not pay for loss of or damage to the following types of property unless caused by the "specified causes of loss" or building glass breakage:
- a. Animals, and then only if they are killed or their destruction is made necessary.
  - b. Fragile articles such as statuary, marbles, chinaware and porcelains, if broken. This restriction does not apply to:
    - (1) Glass; or
    - (2) Containers of property held for sale; or
- c. Builders' machinery, tools and equipment owned by you or entrusted to you, provided such property is Covered Property.
- However, this limitation does not apply:
- (1) If the property is located on or within 100 feet of the described premises, unless the premises is insured under the Builders' Risk Coverage Form; or
  - (2) To Business Income coverage or to Extra Expense coverage.
3. The special limit shown for each category, a. through d., is the total limit of loss of or damage to all property in that category. The special limit applies to any one occurrence of theft, regardless of the types or number of articles that are lost or damaged in that occurrence. The special limits are:
- a. \$2,500 for furs, fur garments and garments trimmed with fur.
  - b. \$2,500 for jewelry, watches, watch movements, jewels, pearls, precious and semi-precious stones, bullion, gold, silver, platinum and other precious alloys or metals. This limit does not apply to jewelry and watches worth \$100 or less per item.
  - c. \$2,500 for patterns, dies, molds and forms.
  - d. \$250 for stamps, tickets, including lottery tickets held for sale, and letters of credit.
- These special limits are part of, not in addition to, the Limit of Insurance applicable to the Covered Property.
- This limitation, C.3., does not apply to Business Income coverage or to Extra Expense coverage.
4. We will not pay the cost to repair any defect to a system or appliance from which water, other liquid, powder or molten material escapes. But we will pay the cost to repair or replace damaged parts of fire extinguishing equipment if the damage:
- a. Results in discharge of any substance from an automatic fire protection system; or
  - b. Is directly caused by freezing.
- However, this limitation does not apply to Business Income coverage or to Extra Expense coverage.

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**D. ADDITIONAL COVERAGES- COLLAPSE**

The term Covered Cause of Loss includes the Additional Coverage - Collapse as described and limited in D.1. through D.5. below.

**1. With respect to buildings:**

- a. Collapse means an abrupt falling down or caving in of a building or any part of a building with the result that the building or part of the building cannot be occupied for its intended purpose;
- b. A building or any part of a building that is in danger of falling down or caving in is not considered to be in a state of collapse;
- c. A part of a building that is standing is not considered to be in a state of collapse even if it has separated from another part of the building;
- d. A building that is standing or any part of a building that is standing is not considered to be in a state of collapse even if it shows evidence of cracking, bulging, sagging, bending, leaning, settling, shrinkage or expansion.

**2. We will pay for direct physical loss or damage to Covered Property, caused by collapse of a building or any part of a building that is insured under this Coverage Form or that contains Covered Property insured under this Coverage Form, if the collapse is caused by one or more of the following:**

- a. The "specified causes of loss" or breakage of building glass, all only as insured against in this Coverage Part;
- b. Decay that is hidden from view, unless the presence of such decay is known to an insured prior to collapse.
- c. Insect or vermin damage that is hidden from view, unless the presence of such damage is known to an insured prior to collapse;
- d. Weight of people or personal property;
- e. Weight of rain that collects on a roof;

- f. Use of defective material or methods in construction, remodeling or renovation if the collapse occurs during the course of the construction, remodeling or renovation. However, if the collapse occurs after construction, remodeling or renovation is complete and is caused in part by a cause of loss listed in D.2.a. through D.2.e., we will pay for the loss or damage even if use of defective material or methods, in construction, remodeling or renovation, contributes to the collapse.

The criteria set forth in 1.a. through 1.d. do not limit the coverage otherwise provided under this Causes of Loss Form for the causes of loss listed in 2.a., 2.d. and 2.e.

**3. With respect to the following property:**

- a. Outdoor radio or television antennas (including satellite dishes) and their lead-in wiring, masts or towers;
- b. Awnings, gutters and downspouts;
- c. Yard fixtures;
- d. Outdoor swimming pools;
- e. Fences;
- f. Piers, wharves and docks;
- g. Beach or diving platforms or appurtenances;
- h. Retaining walls; and
- i. Walks, roadways and other paved surfaces;

if the collapse is caused by a cause of loss listed in D.2.b. through D.2.f., we will pay for loss or damage to that property only if:

- a. Such loss or damage is a direct result of the collapse of a building insured under this Coverage Form; and
- b. The property is Covered Property under this Coverage Form.



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4. If personal property abruptly falls down or caves in and such collapse is not the result of collapse of a building, we will pay for loss or damage to Covered Property caused by such collapse of personal property only if:
  - a. The collapse was caused by a Cause of Loss listed in 2.a. through 2.f. above;
  - b. The personal property which collapse is inside a building; and
  - c. The property which collapses is not of a kind listed in 3. above, regardless of whether that kind of property is considered to be personal property or real property.

The coverage stated in this Paragraph 4. does not apply to personal property if marring and/or scratching is the only damage to that personal property caused by the collapse.

Collapse of personal property does not mean cracking, bulging, sagging, bending, leaning, settling, shrinkage or expansion.

5. This Additional Coverage, Collapse, will not increase the Limits of Insurance provided in this Coverage Part.

**E. Additional Coverage - Limited Coverage For "Fungus," Wet Rot, Dry Rot And Bacteria**

1. The coverage described in E.2. and E.6. only applies when the "fungus," wet or dry rot or bacteria is the result of one or more of the following causes that occurs during the policy period and only if all reasonable means were used to save and preserve the property from further damage at the time of and after that occurrence.
  - a. A "specified cause of loss" other than fire or lightning; or
  - b. Flood, if the Flood Coverage Endorsement applies to the affected premises.
2. We will pay for loss or damage by "fungus," wet or dry rot or bacteria. As used in this Limited Coverage, the term loss or damage means:
  - a. Direct physical loss or damage to Covered Property caused by "fungus," wet or dry rot or bacteria, including the cost of removal of the "fungus," wet or dry rot or bacteria;

- b. The cost to tear out and replace any part of the building or other property as needed to gain access to the "fungus," wet or dry rot or bacteria; and
- c. The cost of testing performed after removal, repair, replacement or restoration of the damaged property is completed, provided there is a reason to believe that "fungus," wet or dry rot or bacteria are present.

3. The coverage described under E.2. of this Limited Coverage is limited to \$15,000. Regardless of the number of claims, this limit is the most we will pay for the total of all loss or damage arising out of all occurrences of "specified cause of loss" (other than fire or lightning) and Flood which take place in a 12-month period (starting with the beginning of the present annual policy period). With respect to a particular occurrence of loss which results in "fungus," wet or dry rot or bacteria, we will not pay more than a total of \$15,000 even if the "fungus," wet or dry rot or bacteria continues to be present or active, or recurs, in a later policy period.
4. The coverage provided under this Limited Coverage does not increase the applicable Limit of Insurance on any Covered Property. If a particular occurrence results in loss or damage by "fungus," wet or dry rot or bacteria, and other loss or damage, we will not pay more, for the total of all loss or damage, than the applicable Limit of Insurance on the affected Covered Property.

If there is covered loss or damage to Covered Property, not caused by "fungus," wet or dry rot or bacteria, loss payment will not be limited by the terms of this Limited Coverage, except to the extent that "fungus," wet or dry rot or bacteria causes an increase in the loss. Any such increase in the loss will be subject to the terms of this Limited Coverage.

5. The terms of this Limited Coverage do not increase or reduce the coverage provided under Paragraph F.2. (Water Damage, Other Liquids, Powder Or Molten Material Damage) of this Causes Of Loss Form or under the Additional Coverage - Collapse.
6. The following, 6.a. or 6.b., applies only if Business Income and/or Extra Expense coverage applies to the described premises and only if the "suspension" of "operations" satisfies all terms and conditions of the applicable Business Income and/or Extra Expense coverage form.

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- a. If the loss which resulted in "fungus," wet or dry rot or bacteria does not in itself necessitate a "suspension" of "operations," but such "suspension" is necessary due to loss or damage to property caused by "fungus," wet or dry rot or bacteria, then our payment under Business Income and/or Extra Expense is limited to the amount of loss and/or expense sustained in a period of not more than 30 days. The days need not be consecutive.
- b. If a covered "suspension" of "operations" was caused by loss or damage other than "fungus," wet or dry rot or bacteria but remediation of "fungus," wet or dry rot or bacteria prolongs the "period of restoration," we will pay for loss and/or expense sustained during the delay (regardless of when such a delay occurs during the "period of restoration"), but such coverage is limited to 30 days. The days need not be consecutive.

#### F. ADDITIONAL COVERAGE EXTENSIONS

1. **Property in Transit.** This Extension applies only to your personal property to which this form applies.
  - a. You may extend the insurance provided by this Coverage Form to apply to your personal property (other than property in the care, custody or control of your salespersons) in transit more than 100 feet from the described premises. Property must be in or on a motor vehicle you own, lease or operate while between points in the coverage territory.
  - b. Loss or damage must be caused by or result from one of the following causes of loss:
    - (1) Fire, lightning, explosion, windstorm or hail, riot or civil commotion, or vandalism.
    - (2) Vehicle collision, upset or overturn. Collision means accidental contact of your vehicle with another vehicle or object. It does not mean your vehicle's contact with the road bed.
    - (3) Theft of an entire bale, case or package by forced entry into a securely locked body or compartment of the vehicle. There must be visible marks of the forced entry.

- c. The most we will pay for loss or damage under this Extension is \$5000.

This Coverage Extension is additional insurance. The Additional Condition, Coinsurance, does not apply to this Extension.

2. **Water Damage, Other Liquids, Powder or Molten Material Damage.** If loss or damage caused by or resulting from covered water or other liquid, powder or molten material damage loss occurs, we will also pay the cost to tear out and replace any part of the building or structure to repair damage to the system or appliance from which the water or other substance escapes. This Coverage Extension does not increase the Limit of Insurance.

#### 3. Glass

- a. We will pay for expenses incurred to put up temporary plates or board up openings if repair or replacement of damaged glass is delayed.
- b. We will pay for expenses incurred to remove or replace obstructions when repairing or replacing glass that is part of a building. This does not include removing or replacing window displays.

This Coverage Extension, F.3., does not increase the Limit of Insurance.

#### G. DEFINITIONS

1. "Fungus" means any type or form of fungus, including mold or mildew, and any mycotoxins, spores, scents or by-products produced or released by fungi.
2. "Specified Causes of Loss" means the following: Fire; lightning; explosion; windstorm or hail; smoke; aircraft or vehicles; riot or civil commotion; vandalism; leakage from fire extinguishing equipment; sinkhole collapse; volcanic action; falling objects; weight of snow, ice or sleet; water damage.
  - a. Sinkhole collapse means the sudden sinking or collapse of land into underground empty spaces created by the action of water on limestone or dolomite. This cause of loss does not include:
    - (1) The cost of filling sinkholes; or
    - (2) Sinking or collapse of land into man-made underground cavities.



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2. Falling objects does not include loss or damage to:

- (1) Personal property in the open; or
- (2) The interior of a building or structure, or property inside inside a building or structure, unless the roof or an outside wall of the building or structure is first damaged by a falling object.

c. Water damage means accidental discharge or leakage of water or steam as the direct result of the breaking apart or cracking of any part of a system or appliance (other than a sump system including its related equipment and parts) containing water or steam.

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## Equipment Breakdown Endorsement

CP 7032 (07-04)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following:

BUILDING AND PERSONAL PROPERTY COVERAGE FORM  
 CONDOMINIUM ASSOCIATION COVERAGE FORM  
 CONDOMINIUM COMMERCIAL UNIT-OWNERS COVERAGE FORM  
 CAUSES OF LOSS - BASIC FORM  
 CAUSES OF LOSS - BROAD FORM  
 CAUSES OF LOSS - SPECIAL FORM  
 BUSINESS INCOME (AND EXTRA EXPENSE) COVERAGE FORM

A. The BUILDING AND PERSONAL PROPERTY COVERAGE FORM, CONDOMINIUM ASSOCIATION COVERAGE FORM or CONDOMINIUM COMMERCIAL UNIT-OWNERS COVERAGE FORM, whichever applies is modified as follows:

### ADDITIONAL COVERAGES

The following is added to 4. ADDITIONAL COVERAGES:

#### Equipment Breakdown

(1) We will pay for loss caused by or resulting from an "accident" to "covered equipment." As used in this Additional Coverage, an "accident" means direct physical loss as follows:

- (a) mechanical breakdown, including rupture or bursting caused by centrifugal force;
- (b) artificially generated electrical current, including electric arcing, that disturbs electrical devices, appliances or wires;
- (c) explosion of steam boilers, steam pipes, steam engines or steam turbines owned or leased by you, or operated under your control;
- (d) loss or damage to steam boilers, steam pipes, steam engines or steam turbines caused by or resulting from any condition or event inside such equipment; or
- (e) loss or damage to hot water boilers or other water heating equipment caused by or resulting from any condition or event inside such boilers or equipment.

(2) Unless otherwise shown in a Schedule, the following coverages also apply to loss caused by or resulting from an "accident" to "covered equipment." These coverages do not provide additional amounts of insurance.

#### (a) Expediting Expenses

With respect to your damaged Covered Property, we will pay, up to \$25,000 unless otherwise shown in a Schedule, the reasonable extra cost to:

- (i) make temporary repairs; and
- (ii) expedite permanent repairs or permanent replacement.

#### (b) Hazardous Substances

We will pay for the additional cost to repair or replace Covered Property because of contamination by a "hazardous substance." This includes the additional cost to clean up or dispose of such property.

Additional costs mean those beyond what would have been required had no "hazardous substance" been involved.

The most we will pay for loss or damage under this coverage, including actual loss of Business Income you sustain, necessary Extra Expense you incur and loss under Spoilage coverage, if shown as covered, is \$25,000 unless otherwise shown in a Schedule.

#### (c) Spoilage

- (i) We will pay for loss of "perishable goods" due to spoilage.
- (ii) We will also pay for your loss of "perishable goods" due to contamination from the release of refrigerant, including but not limited to ammonia.
- (iii) We will also pay any necessary expenses you incur to reduce the amount of loss under this coverage. We will pay for such expense to the extent that they do not exceed the amount of loss that otherwise would have been payable under this coverage.

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(iv) If you are unable to replace the "perishable goods" before its anticipated sale, the amount of our payment will be determined on the basis of the sales price of the "perishable goods" at the time of the "accident," less discounts and expenses you otherwise would have had. Otherwise our payment will be determined in accordance with the Valuation condition.

The most we will pay for loss or damage under this coverage is \$25,000 unless otherwise shown in a Schedule.

**(d) Computer Equipment**

We will pay for loss or damage caused by or resulting from an "accident" to "computer equipment."

The most we will pay for loss or damage under this coverage, including actual loss of Business Income you sustain and necessary Extra Expense you incur, if shown as covered, is \$25,000 unless otherwise shown in a Schedule. Computers used primarily to control or operate "covered equipment" are not subject to this limit.

**(e) Data Restoration**

We will pay for your cost to research, replace and restore data, including programs and operating systems, that is lost or corrupted due to an "accident." The most we will pay for loss or damage under this coverage is \$25,000 unless otherwise shown in a Schedule.

**(f) CFC Refrigerants**

We will pay for the additional cost to repair or replace Covered Property because of the use or presence of a refrigerant containing CFC (chlorofluorocarbon) substances. This means the additional cost to do the least expensive of the following:

- (i) Repair the damaged property and replace any lost CFC refrigerant;
- (ii) Repair the damaged property, retrofit the system to accept a non-CFC refrigerant and charge the system with a non-CFC refrigerant; or
- (iii) Replace the system with one using a non-CFC refrigerant.

Additional costs means those beyond what would have been required had no CFC refrigerant been involved.

The most we will pay for loss or damage under this coverage, including actual loss of Business Income you sustain, necessary Extra Expense you incur and loss under Spoilage coverage, if shown as covered, is \$25,000 unless otherwise shown in a Schedule.

**(g) Service Interruption**

(i) Any insurance provided for Business Income, Extra Expense and Spoilage is extended to apply to loss caused by or resulting from an "accident" to equipment that is owned by a utility, landlord, or their supplier with whom you have a contract to provide you with any of the following services: electrical power, communications, waste disposal, air conditioning, refrigeration, heating, gas, air, water or steam.

(ii) Unless otherwise shown in a Schedule, Service Interruption coverage will not apply unless the failure or disruption of service exceeds 24 hours immediately following the "accident."

**(3) CONDITIONS**

**(a) Suspension**

When any "covered equipment" is found to be in, or exposed to a dangerous condition, any of our representatives may immediately suspend the insurance against loss from an "accident" to that "covered equipment." We can do this by mailing or delivering a written notice of suspension to your address as shown in the Declarations, or at the address where the equipment is located. Once suspended in this way, your insurance can be reinstated only by an endorsement for that "covered equipment." If we suspend your insurance, you will get a pro rata refund of premium. But the suspension will be effective even if we have not yet made or offered a refund.

**(b) Jurisdictional Inspections**

If any property that is "covered equipment" under this endorsement requires inspection to comply with state or municipal boiler and pressure vessel regulations, we agree to perform such inspection on your behalf.

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**(c) Environmental, Safety and Efficiency Improvements**

If "covered equipment" requires replacement due to an "accident," we will pay your additional cost to replace with equipment that is better for the environment, safer or more efficient than the equipment being replaced.

However, we will not pay more than 125% of what the cost would have been to repair or replace with like kind and quality. This condition does not increase any of the applicable limits. This condition does not apply to any property to which Actual Cash Value applies.

**(d) Coinsurance**

If indicated in a Schedule, specified coverages may be subject to coinsurance. We will not pay for the full amount of your loss if the applicable limit is less than the product of the specified coinsurance percentage times the value of the property subject to the coverage at the time of the loss. Instead, we will determine what percentage this calculated product is compared to the applicable limit and apply that percentage to the gross amount of loss. We will then subtract the applicable Deductible. The resulting amount, or the applicable limit, is the most we will pay. We will not pay for the remainder of the loss.

**EXAMPLE 1 (Underinsurance)**

When:

The value of "perishable goods" at the location of loss at the time of the "accident" is \$200,000. The Spoilage Limit is \$100,000 @ 80% Coinsurance.

The actual loss under Spoilage Coverage resulting from the "accident" is \$40,000.

The Spoilage Deductible is \$5,000.

Step 1:  $\$200,000 \times 80\% = \$160,000$

Step 2:  $\$100,000 / \$160,000 = .625$

Step 3:  $\$40,000 \times .625 = \$25,000$

Step 4:  $\$25,000 - \$5,000 = \$20,000$

The total Spoilage loss recovery, after deductible, would be \$20,000. For the remainder, you will either have to rely on other insurance or absorb the loss yourself.

**EXAMPLE 2 (Adequate insurance)**

When:

The value of "perishable goods" at the location of loss at the time of the "accident" is \$100,000. The Spoilage Limit is \$100,000 @ 80% Coinsurance. The actual loss under Spoilage Coverage resulting from the "accident" is \$40,000.

The Spoilage Deductible is \$5,000.

Step 1:  $\$100,000 \times 80\% = \$80,000$

Step 2:  $\$100,000 / \$80,000 = 1.25$

Coinsurance does not apply. Step 3:  $\$40,000 - \$5,000 = \$35,000$

The total Spoilage loss recovery, after deductible, would be \$35,000.

**(4) DEDUCTIBLE**

The deductible in the Declarations applies unless a separate Equipment Breakdown deductible is shown in a Schedule. If a separate Equipment Breakdown deductible is shown, the following applies.

Only as regards Equipment Breakdown Coverage, provision D. DEDUCTIBLE is deleted and replaced with the following:

If deductibles vary by type of "covered equipment" and more than one type of equipment is involved in any "one accident," the highest deductibles will apply.

**(a) Direct and Indirect Coverages**

Unless otherwise shown in the Schedule, the Direct Coverages Deductibles apply to all loss or damage covered by this endorsement, with the exception of those coverages subject to the Indirect Coverages Deductibles as noted below.

Unless more specifically indicated in the Schedule, the Indirect Coverages Deductibles apply to Business Income and Extra Expense.

**(b) Application of Deductibles****(i) Dollar Deductibles**

We will not pay for loss or damage resulting from any "one accident" until the amount of loss or damage exceeds the applicable Deductible shown in the Schedule. We will then pay the amount of loss or damage in excess of the applicable Deductible, up to the applicable Limit of Insurance, after any deduction required by the Coinsurance condition or the Agreed Value Optional Coverage.

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DIANOIAS EATERY LLC ET AL

**(ii) Time Deductible**

If a time deductible is shown in the Schedule, we will not be liable for any loss occurring during the specified number of hours or days immediately following the "accident." If a time deductible is expressed in days, each day shall mean twenty-four consecutive hours.

**(iii) Multiple of Average Daily Value (ADV)**

If a deductible is expressed as a number times ADV, that amount will be calculated as follows:

The ADV (Average Daily Value) will be the Business Income (as defined in any Business Income coverage that is part of this policy) that would have been earned had no "accident" occurred during the period of interruption of business divided by the number of working days in that period. No reduction shall be made for the Business Income not being earned, or in the number of working days, because of the "accident" or any other scheduled or unscheduled shutdowns during the period of interruption. The ADV applies to all locations included in the valuation of the loss.

The number indicated in the Schedule shall be multiplied by the ADV as determined above. The result shall be used as the applicable deductible.

**(iv) Percentage of Loss Deductibles**

If a deductible is expressed as a percentage of loss, we will not be liable for the indicated percentage of the gross amount of loss or damage (prior to any applicable deductible or coinsurance) insured under the applicable coverage. If the dollar amount of such percentage is less than the indicated minimum deductible, the minimum deductible will be the applicable deductible.

**(5) DEFINITIONS****(a) "Boilers and Vessels" means:**

- (i) Any boiler, including attached steam, condensate and feedwater piping, and
- (ii) Any fired or unfired pressure vessel subject to vacuum or internal pressure other than the static pressure of its contents.

This term does not appear elsewhere in this endorsement, but may appear in a Schedule.

(b) "Computer equipment" means Covered Property that is electronic computer or other data processing equipment, including "media" and peripherals used in conjunction with such equipment.

(c) "Covered equipment," unless otherwise specified in a Schedule, means Covered Property built to operate under vacuum or pressure, other than weight of contents, or used for the generation, transmission or utilization of energy.

(d) "Hazardous substance" means any substance other than ammonia that has been declared to be hazardous to health by a governmental agency.

(e) "Media" means all forms of electronic, magnetic and optical tapes and discs for use in any electronic computer or electronic data processing equipment.

(f) "One accident" means: If an initial "accident" causes other "accidents," all will be considered "one accident." All "accidents" that are the result of the same event will be considered "one accident."

(g) "Perishable Goods" means personal property maintained under controlled conditions for its preservation, and susceptible to loss or damage if the controlled conditions change.

(h) "Production Machinery" means any machine or apparatus that processes or produces a product intended for eventual sale. However, "production machinery" does not mean any fired or unfired pressure vessel other than a cylinder containing a movable plunger or piston.

This term does not appear elsewhere in this endorsement, but may appear in a Schedule.

**B. THE CAUSES OF LOSS - BASIC FORM, BROAD FORM or SPECIAL FORM is modified as follows:****(1) All exclusions and limitations apply except:****(a) In the Causes of Loss - Special Form:**

- (i) Exclusion B.2.a., B.2.d.(6) and B.2.e.; and
- (ii) Limitations C.1.a. and C.1.b.

(b) In the Causes of Loss - Broad Form: Exclusions B.2.a., B.2.b. and B.2.c.

(c) In the Causes of Loss - Basic Form: Exclusions B.2.a., B.2.d. and B.2.e.

**(2) The exclusions are modified as follows:**

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- (a) If the Cause of Loss - Basic Form or Causes of Loss - Broad Forms applies, the following is added to Exclusion B.2.: Depletion, deterioration, corrosion, erosion, wear and tear, or other gradually developing conditions. But if loss or damage from an "accident" results, we will pay for that resulting loss or damage.
- (b) The following is added to Exclusion B.1.g.(1): However, if electrical "covered equipment" requires drying out because of the above, we will pay for the direct expenses of such drying out subject to the applicable Limit of Insurance and deductible for Building or Business Personal Property, whichever applies.
- (c) If the Causes of Loss - Special Form applies, as respects this endorsement only, the last paragraph of Exclusion B.2.d. is deleted and replaced with the following:  
But if an excluded cause of loss that is listed in 2.d.(1) through (7) results in an "accident," we will pay for the loss or damage caused by that "accident."
- (3) None of the following is "covered equipment":
- (a) structure, foundation, cabinet, compartment or air supported structure or building;
  - (b) insulating or refractory material;
  - (c) sewer piping, underground vessels or piping, or piping forming a part of a sprinkler system;
  - (d) water piping other than boiler feedwater piping, boiler condensate return piping or water piping forming a part of a refrigerating or air conditioning system;
  - (e) vehicle, aircraft, floating vessel or any equipment mounted on such vehicle, aircraft or floating vessel. However, any property that is stationary, permanently installed at a covered location and that receives electrical power from an external power supplier will not be considered a vehicle, aircraft or floating vessel;
  - (f) dragline, excavation or construction equipment; or
  - (g) equipment manufactured by you for sale.
- (4) We will not pay under this endorsement for loss or damage caused by or resulting from:
- (a) your failure to use all reasonable means to protect the "perishable goods" from damage following an "accident";
  - (b) any defect, virus, loss of data or other situation within "media." But if loss or damage from an "accident" results, we will pay for that resulting loss or damage; or
  - (c) any of the following tests:
    - a hydrostatic, pneumatic or gas pressure test of any boiler or pressure vessel; or
    - an insulation breakdown test of any type of electrical equipment.
- (5) With respect to Service Interruption coverage and, if shown as covered, Spoilage coverage, we will also not pay for loss or damage caused by or resulting from: fire; lightning; windstorm or hail; explosion (except for steam or centrifugal explosion); smoke; aircraft or vehicles; riot or civil commotion; vandalism; sprinkler leakage; falling objects; weight of snow, ice or sleet; freezing or collapse.
- (6) With respect to Service Interruption coverage and, if shown as covered, Business Income and Extra Expense coverages, we will also not pay for delay in resuming operations due to the need to reconstruct or reinput data or programs on "media."
- (7) We will not pay for loss, damage or expense caused directly or indirectly by the following, whether or not caused by or resulting from an "accident":  
Any mold, fungus, mildew or yeast, whether or not such matter is living, including any spores, toxins, vapor, gas, emissions or substances produced by or emanating from such mold, fungus, mildew or yeast. This includes, but is not limited to, costs to test for, monitor, clean up, remove, contain, treat, detoxify, or neutralize or in any way respond to or assess the effects of such mold, fungus, mildew or yeast. However, we will pay for personal property that is "perishable goods," to the extent that spoilage of such property is covered under Spoilage coverage.
- (8) We will not pay under this endorsement for any loss or damage to animals.
- The most we will pay for loss or damage under this endorsement is the applicable Limit of Insurance shown in the Declarations. Coverage provided under this endorsement does not provide an additional amount of insurance.

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MOTORISTS MUTUAL INSURANCE COMPANY



POLICY NUMBER 33.309917-60E



DIANOIAS EATERY LLC ET AL

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## Exclusion Of Loss Due To Virus Or Bacteria

CP 7140 (08-07)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following:

COMMERCIAL PROPERTY COVERAGE FORM  
STANDARD PROPERTY POLICY

- A. The exclusion set forth in Paragraph B. applies to all coverage under all forms and endorsements that comprise this Coverage Form or Policy, including but not limited to forms or endorsements that cover property damage to buildings or personal property and forms or endorsements that cover business income, extra expense or action of civil authority.
- B. We will not pay for loss or damage caused by or resulting from any virus, bacterium or other microorganism that induces or is capable of inducing physical distress, illness or disease.
- C. However, the exclusion in Paragraph B. does not apply to the following:
  - 1. Loss or damage caused by or resulting from "fungus," wet rot or dry rot. Such loss or damage is addressed in a separate exclusion in this Coverage Form or Policy; or
  - 2. Coverage otherwise provided under the Health Department Shutdown coverage provision of the Select Restaurant Endorsement.
- D. With respect to any loss or damage subject to the exclusion in Paragraph B., such exclusion supersedes any exclusion relating to "pollutants."
- E. The following provisions in the Coverage Form or Policy are hereby amended to remove reference to bacteria:
  - 1. Exclusion of "Fungus," Wet Rot, Dry Rot And Bacteria; and
  - 2. Additional Coverage - Limited Coverage for "Fungus," Wet Rot And Bacteria, including any endorsement increasing the scope or amount of coverage.
- F. The terms of this exclusion in Paragraph B., or the inapplicability of this exclusion to a particular loss, do not serve to create coverage for any loss that would otherwise be excluded under this Coverage Form or Policy.

MOTORISTS MUTUAL INSURANCE COMPANY

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**Declarations**

POLICY NUMBER 33.309917-60E

EFFECTIVE DATE 06/20/2019



DIANOIAS EATERY LLC ET AL

**Commercial General Liability Coverage Form**  
**Declarations Page**
**CG 7000 (04-96)**

DIANOIAS EATERY LLC ET AL

<i>Summary of Coverages</i>	<i>Limits of Insurance</i>
EACH OCCURRENCE LIMIT	\$ 1,000,000
GENERAL AGGREGATE LIMIT (OTHER THAN PRODUCTS-COMPLETED OPERATIONS)	\$ 2,000,000
PRODUCTS-COMPLETED OPERATIONS AGGREGATE LIMIT	\$ 2,000,000
PERSONAL AND ADVERTISING INJURY LIMIT	\$ 1,000,000 ANY ONE PERSON OR ORGANIZATION
FIRE DAMAGE LIMIT (PA)	\$ 100,000 ANY ONE FIRE
MEDICAL PAYMENTS LIMIT	\$ 5,000 ANY ONE PERSON

REFER TO SCHEDULE OF PREMISES (IL 7005) FOR A DESCRIPTION OF THE PREMISES LISTED.

PREMISES NUMBER	CLASS CODE NUMBER	CLASSIFICATION DESCRIPTION
0001	16910	RESTAURANTS-ALCOHOL<30% ANN REC,TBL SVC

**Forms and Endorsements**

Forms applicable to this Coverage Form are listed in the Schedule of Forms and Endorsements (IL 7004).

CG 7000 (04-96)

PAGE 01 OF 01

PROCESSED 07/15/2019



## Declarations

POLICY NUMBER 33.309917-60E

EFFECTIVE DATE 06/20/2019



DIANOIAS EATERY LLC ET AL

## Liquor Liability Coverage Form Declarations Page

CG 7025 (07-93)

DIANOIAS EATERY LLC ET AL

### Limits of Insurance

EACH COMMON CAUSE LIMIT	\$	1,000,000
AGGREGATE LIMIT	\$	2,000,000

### Forms and Endorsements

Forms applicable to this Coverage Form are listed in the Schedule of Forms and Endorsements (IL 7004).

MOTORISTS MUTUAL INSURANCE COMPANY

CG 7025 (07-93)

PROCESSED 07/15/2019

 **Motorists Mutual  
Insurance Company®**  
471 East Broad Street, Columbus, Ohio 43215-3861

**HOASTER GEBHARD & CO**

719 QUENTIN RD  
LEBANON PA 17042 6924

(717) 274-3360

POLICY NUMBER 33.309917-60E



DIANOIAS EATERY LLC ET AL

## Liquor Liability Coverage Form

CG 0033 (12-07)

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations, and any other person or organization qualifying as a Named Insured under this policy. The words "we," "us" and "our" refer to the Company providing this insurance.

The word "insured" means any person or organization qualifying as such under Section II - WHO IS AN INSURED.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section V - DEFINITIONS.

### SECTION I - LIQUOR LIABILITY COVERAGE

#### 1. Insuring Agreement

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "injury" to which this insurance applies if liability for such "injury" is imposed on the insured by reason of the selling, serving or furnishing of any alcoholic beverage. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "injury" to which this insurance does not apply. We may, at our discretion, investigate any "injury" and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Section III - LIMITS OF INSURANCE; and
- (2) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under SUPPLEMENTARY PAYMENTS.

- b. This insurance applies to "injury" only if:

- (1) The "injury" occurs during the policy period in the "coverage territory"; and
- (2) Prior to the policy period, no insured listed under Paragraph 1. of Section II - Who Is An Insured and no "employee" authorized by you to give or receive notice of an "injury" or claim, knew that the "injury" had occurred, in whole or in part.

If such a listed insured or authorized "employee" knew, prior to the policy period, that the "injury" occurred, then any continuation, change or resumption of such "injury" during or after the policy period will be deemed to have been known prior to the policy period.

- c. "Injury" which occurs during the policy period and was not, prior to the policy period, known to have occurred by any insured listed under Paragraph 1. of Section II - Who Is An Insured or any "employee" authorized by you to give or receive notice of an "injury" or claim, includes any continuation, change or resumption of that "injury" after the end of the policy period.

- d. "Injury" will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph 1. of Section II - Who Is An Insured or any "employee" authorized by you to give or receive notice of an "injury" or claim:

- (1) Reports all, or any part, of the "injury" to us or any other insurer;
- (2) Receives a written or verbal demand or claim for damages because of the "injury"; or
- (3) Becomes aware by any other means that "injury" has occurred or has begun to occur.

#### 2. Exclusions

This insurance does not apply to:

##### a. Expected Or Intended Injury

"Injury" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" resulting from the use of reasonable force to protect persons or property.

##### b. Workers Compensation And Similar Laws

Any obligation of the insured under a workers compensation, disability benefits or unemployment compensation law or any similar law.

##### c. Employer's Liability

"Bodily injury" to:

- (1) An "employee" of the insured arising out of and in the course of:

POLICY NUMBER 33.309917-60E



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- (a) Employment by the insured; or
- (b) Performing duties related to the conduct of the insured's business; or
- (2) The spouse, child, parent, brother or sister of that "employee" as a consequence of Paragraph (1) above.

This exclusion applies:

- (1) Whether the insured may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the "injury."

**d. Liquor License Not In Effect**

"Injury" arising out of any alcoholic beverage sold, served or furnished while any required license is not in effect.

**e. Your Product**

"Injury" arising out of "your product." This exclusion does not apply to "injury" for which the insured or the insured's indemnitees may be held liable by reason of:

- (1) Causing or contributing to the intoxication of any person;
- (2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
- (3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

**f. Other Insurance**

Any "injury" with respect to which other insurance is afforded, or would be afforded but for the exhaustion of the limits of insurance.

This exclusion does not apply if the other insurance responds to liability for "injury" imposed on the insured by reason of the selling, serving or furnishing of any alcoholic beverage.

**g. War**

"Injury," however caused, arising, directly or indirectly, out of:

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

**SUPPLEMENTARY PAYMENTS**

We will pay, with respect to any claim we investigate or settle, or any "suit" against an insured we defend:

- 1. All expenses we incur.
- 2. The cost of bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.
- 3. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit," including actual loss of earnings up to \$250 a day because of time off from work.
- 4. All court costs taxed against the insured in the "suit." However, these payments do not include attorneys' fees or attorneys' expenses taxed against the insured.
- 5. Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.
- 6. All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.
- 7. Expenses incurred by the insured for first administered to others at the time of an event to which this insurance applies.

These payments will not reduce the limits of insurance.

**SECTION II - WHO IS AN INSURED**

- 1. If you are designated in the Declarations as:
  - a. An individual, you and your spouse are insureds.

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b. A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.

c. A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.

d. An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.

2. Each of the following is also an insured:

a. Your "employees," other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business. However, none of these "employees" is an insured for:

(1) "Injury":

(a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), or to a co-"employee" while that co-"employee" is either in the course of his or her employment or performing duties related to the conduct of your business;

(b) To the spouse, child, parent, brother or sister of that co-"employee" as a consequence of Paragraph (a) above; or

(c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraphs (a) or (b) above.

(2) "Property damage" to property;

(a) Owned or occupied by; or

(b) Rented or loaned

to that "employee," any of your other "employees," by any of your partners or members (if you are a partnership or joint venture), or by any of your members (if you are a limited liability company).

b. Any person or organization having proper temporary custody of your property if you die, but only:

(1) With respect to liability arising out of the maintenance or use of that property; and

(2) Until your legal representative has been appointed.

c. Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this Coverage Form.

3. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization. However,

a. Coverage under this provision is afforded only until the 90th day after you acquire or form the organization or the end of the policy period, whichever is earlier; and

b. Coverage does not apply to "injury" that occurred before you acquired or formed the organization.

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

### SECTION III - LIMITS OF INSURANCE

1. The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:

a. Insureds;

b. Claims made or "suits" brought; or

c. Persons or organizations making claims or bringing "suits."

2. The Aggregate Limit is the most we will pay for all "injury" as the result of the selling, serving or furnishing of alcoholic beverages.

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3. Subject to the Aggregate Limit, the Each Common Cause Limit is the most we will pay for all "injury" sustained by one or more persons or organizations as the result of the selling, serving or furnishing of any alcoholic beverage to any one person.

The Limits of Insurance of this Coverage Form apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

#### SECTION IV - LIQUOR LIABILITY CONDITIONS

##### 1. Bankruptcy

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this Coverage Form.

##### 2. Duties In The Event Of Injury, Claim Or Suit

- a. You must see to it that we are notified as soon as practicable of an "injury" which may result in a claim. To the extent possible, notice should include:
  - (1) How, when and where the "injury" took place;
  - (2) The names and addresses of any injured persons and witnesses; and
  - (3) The nature and location of any "injury."
- b. If a claim is made or "suit" is brought against any insured, you must:
  - (1) Immediately record the specifics of the claim or "suit" and the date received; and
  - (2) Notify us as soon as practicable.

You must see to it that we receive written notice of the claim or "suit" as soon as practicable.
- c. You and any other involved insured must:
  - (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
  - (2) Authorize us to obtain records and other information;
  - (3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit"; and

- (4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of "injury" to which this insurance may also apply.

- d. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

##### 3. Legal Action Against Us

No person or organization has a right under this Coverage Form:

- a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or
- b. To sue us on this Coverage Form unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured; but we will not be liable for damages that are not payable under the terms of this Coverage Form or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

##### 4. Other Insurance

If other valid and collectible insurance is available to the insured for a loss we cover under this Coverage Form, our obligations are limited as follows:

###### a. Primary Insurance

This insurance is primary. Our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in b. below.

###### b. Method Of Sharing

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

POLICY NUMBER 33.309917-60E



DIANOIAS EATERY LLC ET AL

**5. Premium Audit**

- a. We will compute all premiums for this Coverage Form in accordance with our rules and rates.
- b. Premium shown in this Coverage Form as advance premium is a deposit premium only. At the close of each audit period we will compute the earned premium for that period and send notice to the first Named Insured. The due date for audit and retrospective premiums is the date shown as the due date on the bill. If the sum of the advance and audit premiums paid for the policy period is greater than the earned premium, we will return the excess to the first Named Insured.
- c. The first Named Insured must keep records of the information we need for premium computation, and send us copies at such times as we may request.

**6. Representations**

By accepting this policy, you agree:

- a. The statements in the Declarations are accurate and complete;
- b. Those statements are based upon representations you made to us; and
- c. We have issued this policy in reliance upon your representations.

**7. Separation Of Insureds**

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage Form to the first Named Insured, this insurance applies:

- a. As if each Named Insured were the only Named Insured; and
- b. Separately to each insured against whom claim is made or "suit" is brought.

**8. Transfer Of Rights Of Recovery Against Others To Us**

If the insured has rights to recover all or part of any payment we have made under this Coverage Form, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.

**9. When We Do Not Renew**

If we decide not to renew this Coverage Form, we will mail or deliver to the first Named Insured shown in the Declarations written notice of the nonrenewal not less than 30 days before the expiration date.

If notice is mailed, proof of mailing will be sufficient proof of notice.

**SECTION V - DEFINITIONS**

1. "Bodily injury" means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.
2. "Coverage territory" means:
  - a. The United States of America (including its territories and possessions), Puerto Rico and Canada;
  - b. International waters or airspace, but only if the "injury" occurs in the course of travel or transportation between any places included in a. above; or
  - c. All other parts of the world if the "injury" arises out of:
    - (1) Goods or products made or sold by you in the territory described in Paragraph a. above; or
    - (2) The activities of a person whose home is in the territory described in Paragraph a. above, but is away for a short time on your business
 provided the insured's responsibility to pay damages is determined in a "suit" on the merits, in the territory described in Paragraph a. above or in a settlement we agree to.
3. "Employee" includes a "leased worker." "Employee" does not include a "temporary worker."
4. "Executive Officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document.
5. "Injury" means damages because of "bodily injury" and "property damage," including damages for care, loss of services or loss of support.
6. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker."
7. "Property damage" means:
  - a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
  - b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the occurrence that caused it.

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DIANOIAS EATERY LLC ET AL

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8. "Suit" means a civil proceeding in which damages because of "injury" to which this insurance applies are alleged. "Suit" includes:
- a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or
  - b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.
9. "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.
10. "Your product":
- a. Means:
    - (1) Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:
      - (a) You;
      - (b) Others trading under your name; or
      - (c) A person or organization whose business or assets you have acquired; and
    - (2) Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.
  - b. Includes:
    - (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your product," and
    - (2) The providing of or failure to provide warnings or instructions.
  - c. Does not include vending machines or other property rented to or located for the use of others but not sold.

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POLICY NUMBER 33.309917-60E

EFFECTIVE DATE 06/20/2019



DIANOIAS EATERY LLC ET AL

## Additional Insured - Owners, Lessees Or Contractors - Scheduled Person Or Organization

CG 2010 (07-04)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

### SCHEDULE

NAME OF ADDITIONAL INSURED PERSON(S)  
OR ORGANIZATION(S):

ATTENTION

ARAMARK SPORTS AND ENTER  
TAINMENT SERVICES LLC  
ARAMARK TOWER  
1101 MARKET ST  
PHILIDELPHIA PA 19107

HEINZ FIELD PSSI STADIUM  
LLC  
900 ART ROONEY AVE  
PITTSBURGH PA 15212

A. Section II - Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury," "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured(s).

B. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to "bodily injury" or "property damage" occurring after:

1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.



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EFFECTIVE DATE 06/20/2019



DIANOIAS EATERY LLC ET AL

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SCHEDULE CONTINUED

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NAME OF ADDITIONAL INSURED PERSON(S)  
OR ORGANIZATION(S)

ATTENTION

PITTSBURGH MAGAZINE  
600 WATERFRONT DR  
SUITE 100  
PITTSBURGH PA 15222

POLICY NUMBER 33.309917-60E

EFFECTIVE DATE 06/20/2019



DIANOIAS EATERY LLC ET AL

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**Additional Insured - Owners, Lessees Or  
Contractors - Completed Operations****CG 2037 (07-04)****THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE FORM**

**Section II - Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the location designated and described in the schedule of this endorsement performed for that additional insured and included in the "products-completed operations hazard."

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**SCHEDULE**

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**NAME OF ADDITIONAL INSURED PERSON(S)  
OR ORGANIZATION(S)****ATTENTION**

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CITY OF PITTSBURGH  
414 GRANT STREET  
PITTSBURGH PA 15219

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**DESCRIPTION OF LOCATION** ALL LOCATIONS

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**DESCRIPTION OF COMPLETED OPERATIONS**

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ALL OPERATIONS

POLICY NUMBER 33.309917-60E

EFFECTIVE DATE 06/20/2019



DIANOIAS EATERY LLC ET AL

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## Waiver Of Transfer Of Rights Of Recovery Against Others To Us - Scheduled

CG 7035 (10-06)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following:

### COMMERCIAL GENERAL LIABILITY COVERAGE FORM

We waive any right of recovery we may have against the person or organization shown in the Schedule below because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a contract with that person or organization and included in the "products-completed operations hazard". This waiver applies only to the person or organization shown in the Schedule below.

Our rights may only be waived prior to a loss. The insured must do nothing after a loss to impair our rights of recovery against others.

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MOTORISTS MUTUAL INSURANCE COMPANY

### SCHEDULE

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#### NAME OF PERSON OR ORGANIZATION:

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HEINZ FIELD PSSI STADIUM LLC

ARAMARK SPORTS AND  
ENTERTAINMENT SERVICES LLC  
PITTSBURGH MAGAZINE

POLICY NUMBER 33.309917-60E

EFFECTIVE DATE 06/20/2019



DIANOIAS EATERY LLC ET AL

## Employment Practices Liability Insurance

IL 7025 (06-00)

This endorsement modifies insurance provided under the following:

General Liability Coverage Form

### COVERAGE PERIOD

From 06/20/2019 to 06/20/2020

This coverage period begins and ends at 12:01 A.M. Standard Time at the address of the Named Insured shown.

By acceptance of this Coverage part, the Named Insured agrees that the representations and statements in the "Application" are the "insured's" agreements and representations and the Declarations along with the completed and signed "Application" and the Coverage Part and endorsements embody the entire agreement existing between the "insured" and "us" relating to this insurance.

MOTORISTS MUTUAL INSURANCE COMPANY

### Schedule

Summary of Coverages	Limits of Insurance
1. (a) EACH CLAIM LIMIT (INCLUDES "EPLI CLAIM EXPENSES")	\$ 100,000
(b) ANNUAL AGGREGATE LIMIT (INCLUDES "EPLI CLAIM EXPENSES")	\$ 100,000
2. DEDUCTIBLE (PER CLAIM)	\$ 2,500
3. EXTENDED REPORTING PERIOD COVERAGE	

(a) EXTENDED REPORTING PERIOD PREMIUM: N/A % (OF ANNUAL PREMIUM)

(b) EXTENDED REPORTING PERIOD: N/A MONTHS

### Forms And Endorsements

Forms applicable to this Coverage Form are listed in the Schedule of Forms and Endorsements (IL 7004)

POLICY NUMBER 33.309917-60E



DIANOIAS EATERY LLC ET AL

## Employment Practices Liability Insurance (EPLI) Coverage Part (Claims Made)

IL 7024 (06-00)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following:

### COMMERCIAL GENERAL LIABILITY COVERAGE FORM

THE COVERAGE AFFORDED BY THIS COVERAGE PART IS CLAIMS MADE COVERAGE. THIS COVERAGE PART, SUBJECT TO ITS PROVISIONS, APPLIES ONLY TO ANY CLAIM FIRST MADE DURING THE COVERAGE PERIOD OR THE EXTENDED REPORTING PERIOD, IF PURCHASED, AND REPORTED TO US AS SOON AS PRACTICABLE BUT IN NO EVENT LATER THAN 60 DAYS AFTER THE END OF THE COVERAGE PERIOD OR THE EXTENDED REPORTING PERIOD, IF PURCHASED. CLAIMS EXPENSES SHALL REDUCE AND MAY EXHAUST THE LIMIT OF LIABILITY AND SHALL BE INCLUDED IN THE DEDUCTIBLE.

Various provisions in this coverage part restrict coverage. Please read the entire policy carefully to determine your rights, duties and what is and is not covered. Please discuss the coverage provided by this policy with your insurance agent or broker.

Throughout this policy the words you and your refer to "Named Insured" in the EPLI Declarations. The words we, us and our refer to the insurance company shown on the Declarations Page.

The word "Insured" means any person or organization qualifying as such under the definition of "Insured" as defined in DEFINITIONS (SECTION II).

Other words and phrases that appear in parenthesis are defined in DEFINITIONS (SECTION II) of this Coverage Part.

In consideration of, and subject to, the payment of the premium by you and in reliance upon the accuracy and completeness of the "Application," including but not limited to the statements, attachments and exhibits contained in and submitted with the "Application," which shall be the basis of the Coverage Part and shall be incorporated by attachment to the Coverage Part, we agree with you, subject to all terms, exclusions and conditions of this Coverage Part, as follows:

#### I. INSURING AGREEMENT

- A. We will pay on behalf of the "Insured" all "Damages" which the "Insured" becomes legally obligated to pay as a result of a Wrongful Act alleged in any "Claim," if the "Claim" is first made against the "Insured" during the "Coverage Period" or the "Extended Reporting Period," if purchased, and reported to us as soon as practicable but in no event later than 60 days after the end of the "Policy Period" or the "Extended Reporting Period," if purchased.

For the purposes of this Coverage Part, a "Claim" shall be deemed first made against the "Insured" when the "Claim" is received by the "Insured," not when the "Claim" is filed or initiated by the party or parties asserting the "Claim."

- B. We shall have the right and duty to defend any such "Claim" to which this insurance may apply, even if the allegations of the "Claim" are groundless, false or fraudulent. The duty to defend provided by this Coverage Part will end when we have used up the applicable limit of insurance for the payment of "Damages" or "Claims Expenses."

- C. We shall select defense counsel with the consent of the "Insured," which consent shall not be unreasonably withheld. The "Insured" shall cooperate fully with our investigation and defense of any "Claim" as provided in SECTION VIII below.
- D. We shall investigate the "Claim" and, with written consent of the "Insured," shall settle or compromise any "Claim" as we deem appropriate. If the "Insured" refuses to consent to any settlement or compromise recommended by us and acceptable to the claimant, then our liability to pay "Damages" and "Claims Expenses" shall not exceed the amount which we would have paid for "Damages" and "Claim Expenses" at the time the "Claim" could have been settled or compromised, less any deductible.
- E. This insurance applies only if on or before the effective date of this Coverage Part, the "Insured" had no knowledge of any circumstances involving any actual or alleged error, misstatement, misleading statement, act, omission, neglect or breach of duty, which could reasonably be expected to result in a "Claim" made against you, any "Insured" or any "Subsidiary" under this insurance.

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**II. DEFINITIONS**

When the following terms are used in this Coverage Part in parenthesis, whether in singular or in plural, they shall have the meanings indicated.

A. "Application" means the written application attached hereto and forming part of this Policy and the proposal or application for any policy in an uninterrupted sense of policies issued by us of which this Coverage part is a renewal or replacement.

B. "Claims" means:

- (1) any written demand received by the "Insured" which seeks monetary relief from the "Insured" for a "Wrongful Act" and which has been received within the Coverage Territory set forth in Section VI;
- (2) any civil proceeding or lawsuit received by the "Insured," whether through service or otherwise, which seeks monetary relief from the "Insured" for a "Wrongful Act" and which has been filed within the Coverage Territory set forth in Section VI;
- (3) any investigative order or notice of charge received by the "Insured" relative to an administrative or regulatory proceeding initiated before the Equal Employment Opportunity Commission or a similar state agency, which alleges a "Wrongful Act" committed by the "Insured" and which has been filed within the Coverage Territory set forth in Section VI; and
- (4) any written notice received by the "Insured" of an arbitration, mediation or other form of alternative dispute resolution proceeding, which seeks monetary relief from the "Insured" for a "Wrongful Act" and which has been commenced within the Coverage Territory set forth in Section VI;

however, "Claim" shall not include any organized labor or grievance proceeding or arbitration subject to a collective bargaining agreement.

C. "Claim Expenses" means:

- (1) the reasonable and necessary fees charged by any lawyer designated by us or by the "Insured" with our written consent in defending the "Insured" in connection with any "Claim"; and

- (2) all other reasonable and necessary fees, costs and expenses incurred on behalf of the "Insured" by us or by the "Insured" with our written consent in the investigation, adjustment, defense and appeal of any "Claim";

however, "Claim Expenses" shall not include "Damages," salaries, wages, remuneration, overhead or benefit expenses associated with any "Insured" or any of the employees or officials of any "Insured."

D. "Damages" means all sums which the "Insured" is legally obligated to pay solely as a result of a "Claim" insured by this Coverage Part, including judgments, settlements, damages (including back pay, front pay and other damages for loss of future earnings), attorneys' fees, costs or expenses awarded to a prevailing claimant or plaintiff, pre-judgment interest and post-judgment interest;

however, "Damages" shall not include:

- (1) matters deemed uninsurable under the law pursuant to which this Policy is construed;
- (2) taxes, civil or criminal fines or penalties imposed by law;
- (3) punitive, exemplary or liquidated damages or the portion of any multiplied damages award which exceeds the amount that was multiplied, unless these damages are included within "Damages" by an endorsement attached to this Coverage Part and are insurable under the law pursuant to which this Policy is construed;
- (4) the costs associated with any form of non-monetary relief awarded against you or any "Insured"; or
- (5) judgments, awards, or settlements or any other amount owed to any claimant's domestic partner, spouse, child, parent or sibling.

E. "Insured" means:

- (1) you;
- (2) any "Subsidiary" of yours;
- (3) if you are a corporation or an organization other than a partnership or a joint venture, any past, present or future directors and officers of yours or any "Subsidiary" of yours, but only for acts within the scope of their capacity as your director or officer or your "Subsidiary's" director or officer;

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- (4) if you are a partnership or joint venture, any general or limited partner of yours, but only for acts within the scope of your partnership or joint ventures;
- (5) if you are a limited liability company, any member or manager of yours, but only for acts within the scope of their capacity as your member or managers;
- (6) any past, present or future employee, whether such employee was or is in a supervisory, co-worker, subordinate, part-time, seasonal and/or temporary position of yours or any "Subsidiary" of yours, but only for acts with the scope of their employment by you or your "Subsidiary"; however independent contractors are not employees and are not "Insured";
- (7) any individual who is a leased or loaned employee to you or any "Subsidiary" or yours, provided that you or your "Subsidiary" provides indemnification for such individual for services rendered in the same manner as if those services were rendered by an employee of you or your "Subsidiary"; and
- (8) the heirs, executors, administrators, assigns or legal representatives of each of the above "Insureds" in the event of their death, incapacity or bankruptcy.
- However, no person or organization is an "Insured" with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a "Named Insured" in the EPLI Endorsement.
- F. "Named Insured" means the individual, partnership or corporation designated in the EPLI Endorsement. If blank, the "Named Insured" is shown on the Common Policy Declarations Page.
- G. "Coverage Period" means the period from the Coverage Inception Date and hour shown on the EPLI Endorsement to the Policy Expiration Date and hour stated in the Common Policy Declarations or the earlier cancellation date of the Policy or EPLI Coverage, if any.
- H. "Related Wrongful Acts" means "Wrongful Acts" which have a common nexus any fact, circumstance, situation, event, transaction, cause or series of casually connected facts, circumstances, situations, events, transactions or causes.
- I. "Subsidiary" means any entity in which, and only for the period of time that, more than 50% of the outstanding securities or voting rights representing the present right to vote for the election of directors of such entity are owned by you directly or through one or more of your "Subsidiaries," if such entity:
- (1) was so owned at the Coverage Inception Date; or
  - (2) becomes so owned after the Coverage Inception Date provided the provisions of Section IX.C(2) are fulfilled.
- J. "Wrongful Act" means any error, misstatement, misleading statement, act, omission, neglect, or breach of duty actually or allegedly committed or attempted by any "Insured" in connection with any:
- (1) wrongful dismissal, discharge or termination in employment, whether actual or constructive;
  - (2) wrongful failure to hire or promote;
  - (3) wrongful discipline or demotion;
  - (4) wrongful failure to create, apply or enforce any employment-related policy or procedure;
  - (5) wrongful failure to grant tenure;
  - (6) breach of an oral or written contract creating or continuing an employer-employee relationship among the parties to the contract;
  - (7) employment-related misrepresentation or defamation;
  - (8) employment-related invasion of privacy;
  - (9) employment-related infliction of emotional distress;
  - (10) employment-related unlawful discrimination, including, but not limited to, discrimination based upon age, gender, sex, pregnancy, race, color, national origin, religion, sexual orientation, sexual preference, marital status, disability or any other class of persons protected under any federal, state, municipal or local law;
  - (11) employment-related unlawful sexual harassment or other form of workplace harassment, including hostile work environment and quid pro quo harassment, prohibited by any federal, state, municipal or local law;

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(12) employment-related unlawful retaliation against a past, present or future employee of yours or any "Subsidiary" of yours, prohibited by any federal, state municipal or local law;

(13) violation of the Family and Medical Leave Act, as amended;

(14) negligent hiring, evaluation, retention or supervision related to any of the above actual or alleged acts only;

provided that the actual or alleged "Wrongful Act" is directed against a past, present or future employee (whether supervisory, co-worker, subordinate, part-time, season and/or temporary, leased or loaned) of yours or any "Subsidiary" of yours, or an applicant for employment with you or your "Subsidiary."

### III. EXCLUSIONS

This Coverage Part shall not apply to any "Claim" based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving:

A. in fact any dishonest, fraudulent, criminal, or malicious act or omission committed by or at the direction of the insured;

provided however, the dishonest, fraudulent, criminal, or malicious act or omission of one "Insured" shall not be imputed to any other "Insured" or to your strictly vicarious liability for the purpose of determining the applicability of this exclusion;

B. any act, incident or omission which has been the subject of any notice of circumstance or notice of claim given under any policy or coverage of which this Coverage Part is a renewal or replacement, or any policy or coverage with an inception date which precedes the inception date stated in the Common Policy Declarations;

C. any actual or alleged violation of the responsibilities, obligations or duties imposed by the Fair Labor Standards Act (other than the Equal Pay Act), the National Labor Relations Act, the Worker Adjustment and Retraining Notification Act, the Consolidated Omnibus Budget Reconciliation Act, the Occupational Safety and Health Act, the Immigration and Nationality Act, Title IX of the Education Amendments of 1972, the Immigration Reform and Control Act or any statute relating to the benefits, compensation or employment of veterans; or any amendment to any of the foregoing statutes, any rules or regulations promulgated under the foregoing

statutes or any other similar law; provided, that this exclusion shall not apply to actual or alleged unlawful retaliation;

D. the "Insureds" activities and or capacity as:

(1) an officer, director, partner, trustee or employee of business enterprise not named in the Declarations;

(2) an officer, director, partner, trustee or employee of a charitable organization or pension, welfare, profit sharing, mutual or investment fund or trust; or

(3) a fiduciary under the Employment Retirement Income Security Act of 1974 and its amendments or any regulation or order issued pursuant thereto, or any other pension, welfare, retirement or other employee benefit plan or trust sponsored, established or maintained in whole or in part for the benefit of any of your employees or the employees of your "Subsidiary";

whether or not such activities were at the request of any other "Insured";

E. bodily injury to or sickness, disease or death of any person, damage to or destruction of tangible property, including loss of use thereof, assault or battery; provided, that this exclusion shall not apply to employment-related infliction of emotional distress;

F. the failure of the "Insured" to comply with any law governing workers' compensation, unemployment insurance, social security, disability benefits or any similar law; provided, that this exclusion shall not apply to actual or alleged unlawful retaliation;

G. a lockout, strike, picket line, replacement or any other action resulting from or related to organized labor disputes or labor negotiations;

H. damages, costs or expenses incurred by an "Insured" in making physical changes, modifications, alterations or improvements as a part of an accommodation of any disabled person pursuant to the Americans With Disabilities Act 1990 (ADA), the rules and regulations promulgated thereunder, or any similar federal, state or local law, as amended;



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I. any actual or alleged breach of contract, whether oral, written, express or implied, other than a contract creating or continuing an employer-employee relationship among the parties to the contract; or

J. Any injury or damage arising from:

(1) The actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of pollutants.

(2) Any loss, cost or expense arising out of any:

(a) Request, demand or order that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to or assess the effects of pollutants; or

(b) "Claim" or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of pollutants.

Pollutants means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to the recycled, reconditioned or reclaimed.

#### IV. DISCOVERY CLAUSE

If during the "Coverage Period" or the "Extended Reporting Period," if purchased, any "Insured" first becomes aware of a specific "Wrongful Act," and if the "Insured" during the "Policy Period" or "Extended Reporting Period," if purchased, gives written notice to us of:

- A. the specific "Wrongful Act";
- B. the "Damages" which have or may result from such "Wrongful Act"; and
- C. the circumstances by which the "Insured" first became aware of such "Wrongful Act."

then any "Claim" made subsequently arising out of such "Wrongful Act" shall be deemed for the purposes of this insurance to have been made on the date on which written notice was given to us.

#### V. EXTENDED REPORTING PERIOD

Subject to provisions A through E below, if you fail or refuse to renew this Coverage, or cancel this Coverage, you shall have the right to purchase an extended period to report "Claims" under this Coverage Part for any "Claim" first made during the period of time set forth in Item 3.(b) of the EPLI Endorsement and following the effective date of such cancellation or nonrenewal and reported in writing during such period or within 60 days thereafter, but only with respect to any "Wrongful Act" which takes place prior to the effective date of such cancellation or nonrenewal.

Subject to provisions A through E herein below, if we cancel or refuse to renew this Coverage other than for nonpayment of premium or a Deductible or noncompliance with the terms and conditions of this Coverage, you shall have the right to purchase an extended period to report "Claims" under this Coverage part for any "Claim" first made during the period of time set forth in Item 3.(b) of the EPLI Endorsement following the effective date of such and following the effective date of such cancellation or nonrenewal and reported in writing during such period or within 60 days thereafter, but only with respect to any "Wrongful Act" which takes place prior to the effective date of such cancellation or nonrenewal.

- A. The "Extended Reporting Period" shall be effective only upon the payment of an additional premium calculated at the percentage stated in Item 3.(a) of the EPLI Endorsement of the annual premium for this Coverage Part. The additional premium will not exceed 200% of the annual premium for this Coverage Part. At the commencement of the Extended Reporting Period, the entire premium therefore shall be deemed fully earned and non-refundable.
- B. The quotation of a different premium or deductible or limit of liability for renewal is not a cancellation or refusal to renew for the purposes of this provision.
- C. You shall have no right to purchase the "Extended Reporting Period," unless you have satisfied all terms and conditions of the Coverage Part and all premiums and Deductible outstanding have been paid.

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D. Your right to purchase the "Extended Reporting Period" shall terminate unless written notice together with full payment of the premium for the "Extended Reporting Period" is given to us no later than 60 days following the effective date of cancellation or nonrenewal.

E. The fact that the period of time to report "Claims" is extended by virtue of the "Extended Reporting Period" shall not increase or reinstate the Limit of Liability stated in the EPLI Endorsement, shall not extend the "Coverage Period" or change the scope of coverage provided.

#### VI. COVERAGE TERRITORY

The insurance afforded by this Coverage Part applies worldwide, provided that the "Claim" is made and any legal action is pursued within the United States of America, its territories, possessions or commonwealths, or Canada.

#### VII. LIMIT OF LIABILITY AND DEDUCTIBLE

A. We will pay all "Damages" and "Claim Expenses" resulting from each "Claim" in excess of the Deductible stated in Item 2. of the EPLI Endorsement, subject to Section VII B. through VII G.

B. The maximum we will pay for each "Claim" is the Each Claim Limit of Liability stated in Item 1.(a) of the EPLI Endorsement, subject to the Annual Aggregate Limit of Liability stated in Item 1.(b) of the EPLI Endorsement.

C. The maximum we will pay for all "Claims" under this Coverage Part is the Annual Aggregate Limit of Liability stated in Item 1.(b) of the EPLI Endorsement, regardless of the number of "Claims."

D. "Claim Expenses" shall be part of and not in addition to the Limit of Liability and payments of "Claim Expenses" and "Damages" shall reduce the Limit of Liability.

E. If the applicable Limit of Liability is exhausted by:

- (1) payment of "Damages";
- (2) payment of "Claim Expenses," or
- (3) any combination of the above,

all of our obligations under this Coverage Part with respect to any "Claim," including the duty to defend, shall terminate immediately.

F. Deductible

- (1) The Deductible stated in Item 2. of the EPLI Endorsement shall be paid by you, shall apply to

each "Claim" and shall include "Damages" and "Claim Expenses."

- (2) We may from time to time advance payments for "Damages" and "Claim Expenses" within the Deductible. Any amounts within the Deductible shall, upon written demand by us, be paid by you within 30 days.

G. Multiple Insureds, Claims and Claimants

- (1) Two or more "Claims" arising out of the same "Wrongful Act" or "Related Wrongful Acts" shall be treated as a single "Claim" and shall be considered first made at the earlier of the following times:

(a) The time at which the earliest "Claim" involving the same "Wrongful Act" or "Related Wrongful Act" is first made, or

(b) The time at which the "Claim" involving the same "Wrongful Act" or "Related Wrongful Act" is deemed to have been first made pursuant to Section IV.

- (2) The inclusion of more than one "Insured" in the making of a single "Claim," the bringing of more than one "Claim" regarding the same "Wrongful Act" or "Related Wrongful Acts" or the making of a "Claim" by more than one person or organization shall not increase the Limit of Liability

The Limit of Liability for this Coverage Part applies separately to each consecutive annual period and to any remaining period of less than 12 months starting with the beginning of the "Covered Period" shown in the EPLI Endorsement, unless the "Coverage Period" is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limit of Liability.

#### VIII. DUTIES IN THE EVENT OF CLAIM

As a condition precedent to any coverage provided by the Coverage Part and any obligations of ours under this Coverage Part, the "Insured" must comply with each of the following duties in the Event of a "Claim."

A. Notice of "Claim"

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(1) The "Insured" shall provide us with written notice of any "Claim" as soon as practicable, but in no event later than 60 days after the end of the "Coverage Period" or the "Extended Reporting Period," if purchased.

(2) The "Insured" must include with any notice of "Claim" a description of the "Claim," the nature of the alleged "Wrongful Act," a summary of the facts upon which the "Claim" is based, the nature of the alleged damage, the names of the claimants, the names of the "Insured" against whom the "Claim" has been made, the manner in which the insured first became aware of the "Claim" and any documents received directly by the "Insured" or by the "Insured's" representatives in connection with the making and handling of the "Claim," such as any letters, demands, or summonses.

#### B. Assistance and Cooperation of the "Insured"

(1) The "Insured" shall fully assist and cooperate with us in the investigation, settlement and defense of all "Claims" and upon our request shall authorize the release of records and other information, secure and give evidence, attend hearings and trials and obtain the location of and cooperation of witnesses.

(2) The "Insured" shall not, except at the "Insured's" own cost, voluntarily make any payment, assume any obligation, incur any expenses, or admit any liability in connection with any "Claim," incur any "Claim Expenses," or settle any "Claim" without our written consent. The "Insured" further agrees not to take any action which may increase our exposure under this Coverage Part.

#### C. Subrogation

(1) In the event of any payment under this Coverage Part, we shall be subrogated to all the "Insured's" rights of recovery therefore against any person or organization and the "Insured" shall execute and deliver all instruments and papers required and do whatever else is necessary to secure and preserve such rights and to enable us to effectively bring suit in our name. The "Insured" shall do nothing to prejudice such rights and shall provide all assistance and cooperation which we may reasonably require.

(2) We shall not exercise any such right against any persons, firms or corporations included in the definition of "Insured." Notwithstanding the foregoing, we reserve the right to exercise any rights of subrogation against an "Insured" with respect to any "Claim" brought about or contributed to by the dishonest, fraudulent, criminal or malicious act or omission of such "Insured."

#### D. False or Fraudulent "Claims"

If any "Insured" commits any false or fraudulent act in connection with the submission of a "Claim" under this Coverage Part, this Coverage Part shall be rendered null and void as to that "Insured" from the date such fraudulent "Claim" is received by us.

### IX. CONDITIONS

#### A. Application

In granting coverage under this Coverage Part, we have relied on the representations and warranties in the "Application." All such representations and warranties are the basis of coverage under this Coverage Part and are considered as incorporated into and constituting a part of this Coverage Part.

By acceptance of this Policy, the "Insured" agrees that with respect to the statements in the "Application":

(1) that the statements in the "Application" are the true and correct representations and warranties of the "Insured," each shall be deemed material to the acceptance of the risk of the hazard assumed by us under this Coverage Part, and this Coverage Part is issued in reliance upon the truth and accuracy of such representations.

(2) that in the event the "Application" contains misrepresentations or fails to state facts which materially affect either the acceptance of the risk or the hazard assumed by us under this Coverage Part, this Coverage Part in its entirety shall be void and of no effect whatsoever, and

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(3) that this Coverage Part shall be deemed to be a single unitary contract and not a severable contract of insurance or a series of individual insurance contracts with each "Insured."

#### B. Other Insurance

This insurance shall apply in excess of the amount of the Deductible and any other valid and collectible insurance available to the "Insured," whether such other insurance is stated to be primary, pro rata, contributory, excess, contingent or otherwise, unless such other insurance specifically applies as excess insurance over the Limit of Liability provided herein.

#### C. Changes in Exposure

(1) If after the Inception Date of this Coverage:

- (a) you merge into or consolidate with another organization such that the other organization is the surviving organization;
- (b) another organization or person or group of organizations and/or persons acting in concert acquires all or substantially all of your assets;
- (c) another organization or person or group of organizations and/or persons acting in concert acquires securities or voting rights which result in ownership or voting control by such other organization or person or group of organizations or persons of more than 50% of the outstanding securities representing the present right to vote for the election of your directors; or
- (d) you experience a cumulative change of 50% or more of the persons occupying positions on your Board of Directors.

then coverage under this Coverage Part shall continue to apply to the "Insured," but only with respect to any "Claims" first made during the "Policy Period" or the "Extended Reporting Period," if purchased, for "Wrongful Acts" committed or allegedly committed prior to the effective date of such merger, consolidation, acquisition or change in positions and only if the following conditions are met:

- (i) the "Insured" provides written notice of such event or transaction to us within 30 days of the effective date of such event or transaction;

(ii) the "Insured" provides us with such information in connection therewith as we may deem necessary; and

(iii) the "Insured" accepts any special terms, conditions, or exclusions or pays additional premium charge as may be required.

(2) if after the Inception Date of this Policy, the "Insured" merges or consolidates with another entity such that the "Insured" is the surviving entity, acquires another entity or substantially all of the assets of another entity or creates or acquires a "Subsidiary" as defined in Section II. I., no coverage shall be afforded under this Coverage Part for any "Claim" involving the assets acquired, the entity which is merged or consolidated with or acquired, the "Subsidiary," or any of the assets, liabilities, directors, officers or employees of such entity or such "Subsidiary" unless:

- (a) the "Insured" provides written notice of such merger, consolidation, creation or acquisition to us within 30 days after the effective date of such merger, consolidation, creation or acquisition;
- (b) the "Insured" provides us with such information in connection therewith as we may deem necessary;
- (c) the "Insured" accepts any special terms, conditions, or exclusions or pays additional premium charge as may be required; and
- (d) we, at our sole discretion, agree to provide such coverage.

(3) In the event of sale or dissolution of any "Subsidiary" or yours after the Inception Date of this Coverage, the Coverage Part shall continue to apply to such "Subsidiary" and to the partners, executive officers, directors, stockholders and employees of such "Subsidiary," but only with respect to any "Claim" first made during the "Policy Period" or the "Extended Reporting Period," if purchased, for "Wrongful Act" committed or allegedly committed prior to the effective date of sale or dissolution.

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**D. Action Against Us**

No action shall lie against us unless, as a condition precedent thereto, the "Insured" has fully complied with all the terms of this Coverage Part and both the "Insured's" liability and the amount of the "Insured's" obligation to pay have been fully and finally determined either by judgment against the "Insured" or by written agreement between the "Insured," the claimant and us. Any person or organization or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this Coverage Part to the extent of the insurance afforded by this Coverage Part. Nothing contained in this Coverage Part shall give any person or organization any right to join us as a part to any "Claim." The "Insured" or any of its legal representatives shall not implead us in any "Claim."

**E. Bankruptcy or Insolvency**

Bankruptcy or insolvency of the "Insured" or the "Insured's" estate shall not relieve us of any of our obligations under this Coverage Part.

**F. Authorization**

By acceptance of this Policy, the "Insureds" agree that you shall act on behalf of all "Insureds" with respect to the purchase and negotiation of this Coverage, the giving and receiving of all notices as provided herein, the cancellation of this Policy, the payment of premiums and Deductibles, the receiving of any return premiums that may become due and the purchase of the "Extended Reporting Period."

**G. When We Do Not Renew**

If we decide not to renew this Coverage Part, we will mail or deliver to the first "Named Insured" shown in the EPLI Endorsement written notice of the nonrenewal not less than 30 days before the expiration date.

If notice is mailed, proof of mailing will be sufficient proof of notice.

**X. NUCLEAR ENERGY LIABILITY EXCLUSION (BROAD FORM)****A. This policy does not apply:****(1) To any damages:**

(a) With respect to which an insured under the Coverage is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters, Nuclear Insurance Association of Canada or any of their successors, or would be an "Insured" under any such policy but for its termination upon exhaustion of its limit of liability; or

(b) Resulting from the hazardous properties of nuclear material and with respect to which (i) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (ii) the insured is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.

**(2) To any "damages" resulting from the "Hazardous Properties" of nuclear material, if:**

(a) The nuclear material (i) is at any nuclear facility owned by, or operated by or on behalf of, an insured or (ii) has been discharged or dispersed therefrom;

(b) The nuclear material is contained in spent fuel or waste at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of the insured; or

(c) The damages arise out of the furnishing by an insured of services, materials, parts or equipment in connection with the planning, construction, maintenance, operations or use of any nuclear facility.

**2. As used in this exclusion:**

Hazardous properties include radioactive, toxic or explosive properties;

Nuclear material means source material, special nuclear material or by-product material;

Source material, special nuclear material, and by-product material have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof;

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Spent fuel means any fuel element or fuel components, solid or liquid, which has been used or exposed to radiation in a nuclear reactor;

"Waste" means any waste material (1) containing by-product material other than the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its "source material" content, and (2) resulting from the operation by any person or organization of any nuclear facility included under the first two paragraphs of the definition of "nuclear facility."

"Nuclear facility" means:

- (a) Any nuclear reactor;
- (b) Any equipment or device designed or used for
  - (i) separating the isotopes of uranium or plutonium
  - (ii) processing or utilizing spent fuel, or
  - (iii) handling, processing or packaging waste;
- (c) Any equipment or device used for the processing, fabricating or alloying of special nuclear material if at any time the total amount of such material in the custody of the insured at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;

- (d) Any structure, basin excavation, premises or place prepared or used for the storage or disposal of "waste";

and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations;

"Nuclear reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material;

"Damages" include all forms of radioactive contamination of property.

MOTORISTS MUTUAL INSURANCE COMPANY



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## Commercial General Liability Coverage Form

CG 0001 (12-07)

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations, and any other person or organization qualifying as a Named Insured under this policy. The words "we," "us" and "our" refer to the company providing this insurance.

The word "insured" means any person or organization qualifying as such under Section II - Who Is An Insured.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section V - Definitions.

### SECTION I - COVERAGES

#### COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY

##### 1. Insuring Agreement

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply. We may, at our discretion, investigate any "occurrence" and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Section III - Limits Of Insurance; and

- (2) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B or medical expenses under Coverage C.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments - Coverages A and B.

- b. This insurance applies to "bodily injury" and "property damage" only if:

- (1) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";

- (2) The "bodily injury" or "property damage" occurs during the policy period; and

- (3) Prior to the policy period, no insured listed under Paragraph 1. of Section II - Who Is An Insured and no "employee" authorized by you to give or receive notice of an "occurrence" or claim, knew that the "bodily injury" or "property damage" had occurred, in whole or in part. If such a listed insured or authorized "employee" knew, prior to the policy period, that the "bodily injury" or "property damage" occurred, then any continuation, change or resumption of such "bodily injury" or "property damage" during or after the policy period will be deemed to have been known prior to the policy period.

- c. "Bodily injury" or "property damage" which occurs during the policy period and was not, prior to the policy period, known to have occurred by any insured listed under Paragraph 1. of Section II - Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim, includes any continuation, change or resumption of that "bodily injury" or "property damage" after the end of the policy period.

- d. "Bodily injury" or "property damage" will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph 1. of Section II - Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim:

- (1) Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;

- (2) Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage"; or

- (3) Becomes aware by any other means that "bodily injury" or "property damage" has occurred or has begun to occur.

- e. Damages because of "bodily injury" include damages claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury."

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**2. Exclusions**

This insurance does not apply to:

**a. Expected Or Intended Injury**

"Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" resulting from the use of reasonable force to protect persons or property.

**b. Contractual Liability**

"Bodily injury" or "property damage" for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:

- (1) That the insured would have in the absence of the contract or agreement; or
- (2) Assumed in a contract or agreement that is an "insured contract," provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement. Solely for the purpose of liability assumed in an "insured contract," reasonable attorney fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because of "bodily injury" or "property damage," provided:
  - (a) Liability to such party for, or for the cost of, that party's defense has also been assumed in the same "insured contract"; and
  - (b) Such attorney fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.

**c. Liquor Liability**

"Bodily injury" or "property damage" for which any insured may be held liable by reason of:

- (1) Causing or contributing to the intoxication of any person;
- (2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
- (3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

This exclusion applies only if you are in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages.

**d. Workers Compensation And Similar Laws**

Any obligation of the insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law.

**e. Employer's Liability**

"Bodily injury" to:

- (1) An "employee" of the insured arising out of and in the course of:
  - (a) Employment by the insured; or
  - (b) Performing duties related to the conduct of the insured's business; or
- (2) The spouse, child, parent, brother or sister of that "employee" as a consequence of Paragraph (1) above.

This exclusion applies:

- (1) Whether the insured may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

This exclusion does not apply to liability assumed by the insured under an "insured contract."

**f. Pollution**

(1) "Bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of pollutants:

- (a) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, any insured. However, this subparagraph does not apply to:
  - (i) "Bodily injury" if sustained within a building and caused by smoke, fumes, vapor or soot produced by or originating from equipment that is used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use, by the building's occupants or their guests;



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- (ii) "Bodily injury" or "property damage" for which you may be held liable, if you are a contractor and the owner or lessee of such premises, site or location has been added to your policy as an additional insured with respect to your ongoing operations performed for that additional insured at that premises, site or location and such premises, site or location is not and never was owned or occupied by, or rented or loaned to, any insured, other than that additional insured; or
- (iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire";
- (b) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;
- (c) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for:
- (i) Any insured; or
  - (ii) Any person or organization for whom you may be legally responsible; or
- (d) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the "pollutants" are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor. However, this subparagraph does not apply to:
- (i) "Bodily injury" or "property damage" arising out of the escape of fuels, lubricants or other operating fluids which are needed to perform the normal electrical, hydraulic or mechanical functions necessary for the operation of "mobile equipment" or its parts, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the "bodily injury" or "property damage" arises out of the intentional discharge, dispersal or release of the fuels, lubricants or other operating fluids, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent that they be discharged, dispersed or released as part of the operations being performed by such insured, contractor or subcontractor.
- (ii) "Bodily injury" or "property damage" sustained within a building and caused by the release of gases, fumes or vapors from materials brought into that building in connection with operations being performed by you or on your behalf by a contractor or subcontractor; or
- (iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire."
- (e) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effect of, "pollutants."
- (2) Any loss, cost or expense arising out of any:
- (a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
  - (b) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to or assessing the effects of, "pollutants".
- However, this paragraph does not apply to liability for damages because of "property damage" that the insured would have in the absence of such request, demand, order or statutory or regulatory requirement, or such claim or "suit" by or on behalf of a governmental authority.

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**g. Aircraft, Auto Or Watercraft**

"Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft owned or operated by or rented or loaned to any insured. Use includes operation and "loading or unloading."

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft that is owned or operated by or rented or loaned to any insured.

This exclusion does not apply to:

- (1) A watercraft while ashore on premises you own or rent;
- (2) A watercraft you do not own that is:
  - (a) Less than 26 feet long; and
  - (b) Not being used to carry persons or property for a charge;
- (3) Parking an "auto" on, or on the ways next to, premises you own or rent, provided the "auto" is not owned by or rented or loaned to you or the insured;
- (4) Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft or watercraft; or
- (5) "Bodily injury" or "property damage" arising out of:
  - (a) The operation of machinery or equipment that is attached to, or part of, a land vehicle that would qualify under the definition of "mobile equipment" if it were not subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the state where it is licensed or principally garaged; or
  - (b) the operation of any of the machinery or equipment listed in Paragraph f.(2) or f.(3) of the definition of "mobile equipment."

**h. Mobile Equipment**

"Bodily injury" or "property damage" arising out of:

- (1) The transportation of "mobile equipment" by an "auto" owned or operated by or rented or loaned to any insured; or
- (2) The use of "mobile equipment" in, or while in practice for, or while being prepared for, any prearranged racing, speed, demolition or stunting activity.

**i. War**

"Bodily injury" or "property damage," however caused, arising, directly or indirectly, out of:

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

**j. Damage To Property**

"Property damage" to:

- (1) Property you own, rent or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;
- (2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;
- (3) Property loaned to you;
- (4) Personal property in the care, custody or control of the insured;
- (5) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations; or
- (6) That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

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Paragraphs (1), (3) and (4) of this exclusion do not apply to "property damage" (other than damage by fire) to premises, including the contents of such premises, rented to you for a period of 7 or fewer consecutive days. A separate limit of insurance applies to Damage To Premises Rented To You as described in Section III - Limits of Insurance.

Paragraph (2) of this exclusion does not apply if the premises are "your work" and were never occupied, rented or held for rental by you.

Paragraphs (3), (4), (5) and (6) of this exclusion do not apply to liability assumed under a sidetrack agreement.

Paragraph (6) of this exclusion does not apply to "property damage" included in the "products-completed operations hazard."

**k. Damage To Your Product**

"Property damage" to "your product" arising out of it or any part of it.

**l. Damage To Your Work**

"Property damage" to "your work" arising out of it or any part of it and included in the "products-completed operations hazard."

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

**m. Damage To Impaired Property Or Property Not Physically Injured**

"Property damage" to "impaired property" or property that has not been physically injured, arising out of:

- (1) A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or
- (2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to "your product" or "your work" after it has been put to its intended use.

**n. Recall Of Products, Work Or Impaired Property**

Damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

- (1) "Your product";
- (2) "Your work"; or
- (3) "Impaired property";

if such product, work, or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

**o. Personal And Advertising Injury**

"Bodily injury" arising out of "personal and advertising injury."

**p. Electronic Data**

Damages arising out of the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate electronic data.

As used in this exclusion, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

**q. Distribution Of Material In Violation Of Statutes**

"Bodily injury" or "property damage" arising directly or indirectly out of any action or omission that violates or is alleged to violate.

- (1) The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law; or
- (2) The CAN-SPAM Act of 2003, including any amendment of or addition to such law; or
- (3) Any statute, ordinance or regulation, other than the TCPA or CAN-SPAM Act of 2003, that prohibits or limits the sending, transmitting, communicating or distribution of material or information.

Exclusions c. through n. do not apply to damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner. A separate limit of insurance applies to this coverage as described in Section III - Limits Of Insurance.

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**COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY****1. Insuring Agreement**

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "personal and advertising injury" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "personal and advertising injury" to which this insurance does not apply. We may, at our discretion, investigate any offense and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Section III - Limits Of Insurance; and
- (2) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverage A or B or medical expenses under Coverage C.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments - Coverages A and B.

- b. This insurance applies to "personal and advertising injury" caused by an offense arising out of your business but only if the offense was committed in the "coverage territory" during the policy period.

**2. Exclusions**

This insurance does not apply to:

**a. Knowing Violation Of Rights Of Another**

"Personal and advertising injury" caused by or at the direction of the insured with the knowledge that the act would violate the rights of another and would inflict "personal and advertising injury."

**b. Material Published With Knowledge Of Falsity**

"Personal and advertising injury" arising out of oral or written publication of material, if done by or at the direction of the insured with knowledge of its falsity.

**c. Material Published Prior To Policy Period**

"Personal and advertising injury" arising out of oral or written publication of material whose first publication took place before the beginning of the policy period.

**d. Criminal Acts**

"Personal and advertising injury" arising out of a criminal act committed by or at the direction of the insured.

**e. Contractual Liability**

"Personal and advertising injury" for which the insured has assumed liability in a contract or agreement. This exclusion does not apply to liability for damages that the insured would have in the absence of the contract or agreement.

**f. Breach Of Contract**

"Personal and advertising injury" arising out of a breach of contract, except an implied contract to use another's advertising idea in your "advertisement."

**g. Quality Or Performance Of Goods - Failure To Conform To Statements**

"Personal and advertising injury" arising out of the failure of goods, products or services to conform with any statement of quality or performance made in your "advertisement."

**h. Wrong Description Of Prices**

"Personal and advertising injury" arising out of the wrong description of the price of goods, products or services stated in your "advertisement."

**i. Infringement Of Copyright, Patent, Trademark Or Trade Secret**

"Personal and advertising injury" arising out of the infringement of copyright, patent, trademark, trade secret or other intellectual property rights. Under this exclusion, such other intellectual property rights do not include the use of another's advertising idea in your "advertisement."

However, this exclusion does not apply to infringement, in your "advertisement," of copyright, trade dress or slogan.

**j. Insureds In Media And Internet Type Businesses**

"Personal and advertising injury" committed by an insured whose business is:

- (1) Advertising, broadcasting, publishing or telecasting;
- (2) Designing or determining content of websites for others; or
- (3) An Internet search, access, content or service provider.